



WICHITA AIRPORT AUTHORITY

CONCESSION AND LEASE AGREEMENT

By and between

WICHITA AIRPORT AUTHORITY

and

WICHITA EISENHOWER HOTEL LLC

at the

WICHITA DWIGHT D. EISENHOWER NATIONAL AIRPORT

WICHITA, KANSAS

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THIS CONCESSION AND LEASE AGREEMENT ("Agreement") is entered into **this 25th day of June, 2019**, between the Wichita Airport Authority, Wichita, Kansas ("LESSOR") and Wichita Eisenhower Hotel LLC, Federal Tax Identification #83-4677256 ("LESSEE"), or collectively referred to as the ("Parties") to this Agreement.

WHEREAS, LESSOR is a quasi-governmental entity authorized under the laws of the State of Kansas to own and operate one or more airports, with full, lawful power and authority to enter into binding legal instruments by and through its governing body; and

WHEREAS, LESSOR owns, operates, regulates, administers, and maintains the Wichita Dwight D. Eisenhower National Airport ("Airport"); and

WHEREAS, LESSEE is an individual, or entity authorized to operate in the state of Kansas that desires to lease land and improvements from the LESSOR, and provide Select Services Hotel and related services under the terms and conditions set forth below in this Concession and Lease Agreement; and

WHEREAS, the Parties desire to enter into this CONCESSION AND LEASE AGREEMENT for the purpose of LESSEE leasing from LESSOR parcels of Land and improvements thereon, and providing Select Services Hotel and related services therefrom; and

NOW, THEREFORE, in consideration of the mutual promises and agreements herein set forth, LESSOR and LESSEE do hereby covenant and agree as follows:

1. DEFINITIONS

The terms and phrases defined in this Section for all purposes of this Concession and Lease Agreement shall have the following meanings:

Agreement shall mean this Concession and Lease Agreement which creates rights and obligations of the parties to such Agreement.

Airport shall mean the Wichita Dwight D. Eisenhower National Airport under the ownership, control and jurisdiction of the Wichita Airport Authority.

Airport Property shall mean any property, facilities, and improvements owned, leased and/or under the control of the LESSOR and roads and streets contained thereon.

Certificate of Occupancy shall mean the certificate issued by the Metropolitan Area Building and Construction Department (MABCD) required as a prerequisite for the legal public occupancy and use of facilities as defined by City/County Code.

Commencement Date shall mean the date specified in Section 3 TERM of this Agreement as the beginning date of the Initial Term and any subsequent Option Terms.

Commercial Business or Commercial Activity shall mean:

- (a) exchanging, trading, buying, hiring, providing or selling of commodities, goods, services or property of any kind on Airport Property;
- (b) engaging in any conduct on Airport Property for revenue-producing purposes, whether or not currency, monetary exchange or other forms of monetary instruments or credits ultimately are exchanged, obtained, or transferred on Airport Property; or
- (c) offering or exchanging of any service on Airport Property as a part of, or as a condition to, other revenue-producing activities or services on or off Airport Property; or
- (d) acting for the purpose of securing revenue, earnings, income, and/or compensation (including exchange for service), and/or profit, whether or not such objectives are accomplished.

Concession Fee shall mean a monetary amount charged by LESSOR as compensation for an act, service or privilege provided by LESSOR as described in Section 4 RENTALS AND CONCESSION FEES of this Agreement.

Contract Year shall mean the twelve (12) month period of time which shall start on the Commencement Date of the Initial Term of this Agreement. Subsequent Contract Years shall continue thereafter for continuous twelve (12) month periods throughout the Initial Term and Option Terms, if exercised, durations as described in Section 3 TERM of this Agreement. The first day of the Initial Term, as defined in Section 3 TERM of this Agreement, shall mark the Commencement Date the first day of the first Contract Year.

Director shall mean the Director of Airports, who is the person designated by the LESSOR to exercise functions with respect to the rights and obligations of the LESSOR under this Agreement, and shall include any person expressly delegated by the Director of Airports to exercise functions with respect to the rights and obligations of the Director of Airports under this Agreement.

Hazardous Materials shall mean any hazardous or toxic substance, material or waste, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as Hazardous Material(s) (40 CFR Part 302) and amendments thereto, or such substances, materials and wastes that are or become regulated under any applicable local, state or federal law.

Improvements shall mean any new construction, or addition, alteration or betterment, to real estate or any existing improvements on any part thereof including structures, paved surfaces and other ancillary and supporting improvements.

Land shall mean the real estate surfaces, minus buildings, fixtures and improvements, within the defined vertical limits of the Premises boundary.

Opening Day shall mean the date on which the Select Services Hotel opens for commercial business to the general public.

Premises shall mean the facilities leased under this Agreement, and designated by Exhibit A of this Agreement, which may be amended by consent of the Parties from time to time.

Project shall mean construction and operation on the Premises of a high quality, nationally recognized brand hotel with a minimum of ninety guest rooms, parking lot, ancillary roadways and accesses, requiring a minimum of seven million dollars (\$7,000,000) of initial private capital investment.

Rules, Regulations and Codes shall mean those codes established and set forth under Chapter 9.35 AIRPORTS, of the Code of City Ordinances of the City of Wichita; and shall also mean those Airport Standard Operating Procedures establishing certain policies and procedures on Airport Property.

Select Services Hotel shall mean an upscale/select lodging/hospitality product with select service offerings such as meeting rooms and limited food and drink menu and which is not a full-service hotel. A Select Services Hotel acceptable to LESSOR will be under a premium, high quality and nationally recognized hotel brand.

Tax shall mean and includes any assessment, imposition, or levy imposed by any governmental body pursuant to its taxing power.

Term shall mean the express time period during which LESSEE has rights and obligations to the Premises as established under Section 3 TERM of this Agreement.

2. PREMISES

- a. LESSOR agrees to let to LESSEE, and LESSEE does hereby agree to rent from LESSOR, certain real property located at Wichita Dwight D. Eisenhower National Airport, Parcel 1 located at 1523 S. Ridge Road, consisting of 264,000 sq. ft. of Land ("Premises"), as set forth and shown on the attached Exhibit "A". The Premises shall include the Land and any Improvements, located and constructed upon the Land.
- b. The taking of possession of the Premises by LESSEE shall constitute acknowledgement that the Premises are in good and tenantable condition, and LESSEE agrees to accept Premises in its presently existing condition, "as is," "where is," and that LESSOR shall not be obligated to make any improvements or modifications to the Premises.

- c. During the Term of this Agreement, LESSOR or LESSEE may cause to be re-measured by a Kansas professional surveyor, areas within and around the Premises in an effort to more accurately reflect improvements, additions and modifications. In the event the square footage of the Premises identified herein differs from the Premises square footage determined by such re-measurement, the Parties agree to enter into an amendment to this Agreement to modify the Premises description to reflect the actual square footage of the Premises subject to the provisions of this Agreement. If the actual square footage of the Premises is determined to differ from that square footage herein defined, the then-current rent shall be re-calculated and applied. Thereafter, LESSEE's rent shall be based upon the re-measured square footage. The Parties agree that any increase or decrease in the rent payable resulting from re-measurement of the Premises shall not be applied retroactively. The Director may execute an amendment to this Agreement on behalf of LESSOR to reflect the adjusted premises and rent.

3. TERM

a. **Initial Term**

The Term ("Initial Term") of this Agreement shall commence on **October 1, 2019** ("Commencement Date"), and shall continue for a period of thirty (30) years, with the Initial Term expiring on **September 30, 2049**, unless otherwise terminated under provisions agreed to herein.

b. **Option Terms**

This Agreement may be renewed upon the mutual agreement of the Parties, for up to two (2) separate, consecutive ten (10) year periods ("Option Term"). If LESSEE wishes to exercise an Option Term, written request shall be given to LESSOR no less than ninety (90) calendar days prior to the expiration of the current Term. The second Option Term is available only after successful completion of the first Option Term. LESSOR shall deliver any approval of such request within sixty (60) calendar days prior to the expiration of the current Term.

The Option Terms, if exercised by the Parties, as expressed under the conditions of this Agreement, shall be:

First Option Term:	October 1, 2049, and expire on September 30, 2059
Second Option Term:	October 1, 2059, and expire on September 30, 2069

4. RENTALS and CONCESSION FEES

a. Land Rental

LESSEE shall pay to LESSOR land rental for the Premises described in Section 2 PREMISES. The Land Rental shall be calculated as follows:

INITIAL TERM					
Parcel 1 - Exhibit A					
1523 S. Ridge Road					
264,000 Sq. Ft. or more, as agreed					
Effective Dates			Rate Per Sq. Ft.	Annual	Monthly
10/01/2019	-	09/30/2022	\$.4118	\$108,715.20	\$9,059.60

Land Rental terminates after September 30, 2022, to be replaced by payment of the higher of either the Concession Fee or Minimum Annual Guarantee (MAG).

b. Concession Fee

The LESSEE shall pay to LESSOR an annual Concession Fee in twelve (12) monthly installments determined as follows:

Initial Term

Contract Years 1 – 3	No Concession Fee Due
Contract Years 4 - 27	1% of total Gross Revenues or MAG
Contract Years 28 – 30	3.5% of total Gross Revenues or MAG

First Option Term

Contract Years 31 – 35	3.5% of total Gross Revenues or MAG
Contract Years 36 – 40	4.5% of total Gross Revenues or MAG

Second Option Term

Contract Years 41 – 50

5.5% of total Gross Revenues
or MAG

c. Minimum Annual Guarantee

The LESSEE shall pay to the LESSOR the scheduled fees described in this Section. Starting at Contract Year 4, the schedule of payments shall be the greater of either LESSEE's scheduled percentage of total annual gross revenues, defined as the Concession Fee, or a minimum annual guarantee (MAG). There is no MAG for Years 1-3. The MAG for Contract Year 4 shall not be less than \$130,944.00. For all subsequent Contract Years thereafter, the MAG shall be an amount equal to eighty-five percent (85%) of the annual Concession Fee of the previous Contract Year paid by LESSEE; however, in no event shall the MAG for the next succeeding Contract Year be less than the MAG for the previous Contract Year.

d. Tables – Summary of Concession Fee Schedule

CONCESSION FEE SCHEDULE					
Initial Term Effective Dates			Fee %		
October 1, 2019	-	September 30, 2022	0		No Concession Fee or MAG Due
October 1, 2022	-	September 30, 2024	1%	OR	Minimum of \$130,944
October 1, 2024	-	September 30, 2046	1%	OR	Amount equal to eighty-five percent (85%) of concession fee from the immediate preceding Contract Year, but not less than MAG for the previous Contract Year.
October 1, 2046	-	September 30, 2049	3.5%		

CONCESSION FEE SCHEDULE					
First Option Term Effective Dates			Fee %		
October 1, 2049	-	September 30, 2054	3.5%	OR	Amount equal to eighty-five percent (85%) of concession fee from the immediate preceding Contract Year, but not less than MAG for the previous Contract Year.
October 1, 2054	-	September 30, 2059	4.5%		

CONCESSION FEE SCHEDULE					
Second Option Term Effective Dates			Fee %		
October 1, 2059	-	September 30, 2069	5.5%	OR	Amount equal to eighty-five percent (85%) of concession fee from the immediate preceding Contract Year, but not less than MAG for the previous Contract Year.

5. DEFINITION OF GROSS REVENUES

- a. Gross Revenues shall mean, for all purposes in this Agreement, all monies paid to LESSEE or considerations of determinable value received from customers and clients by LESSEE, and any affiliate or subsidiary companies, concessionaires, licensees, permittees or sub-lessees conducting any business from or upon the Premises, after discounts and coupons deducted at the time of sale, for:
- 1) Lodging;
 - 2) Sales of all food and beverages, including catering;
 - 3) Any and all additional sales or services not expressly excluded in this Section.

b. Only the following shall be **excluded** from the term "Gross Revenues":

- 1) Packaged food and beverage products dispensed from vending machines;
- 2) Credits or refunds made to customers;
- 3) Insurance proceeds received by LESSEE in settlement of claims for loss or damage to the Premises or personal property;
- 4) Sales taxes or other taxes of a similar or equivalent nature paid to or collected by LESSEE on behalf of any taxing governmental agency.

6. GOOD FAITH SECURITY DEPOSIT AND LIQUIDATED DAMAGES FOR NON-COMPLETION

- a. At the time of signing this Agreement by LESSEE, LESSEE agrees to deposit two million U.S. dollars (\$2,000,000), or in the alternative such as marketable securities, surety bond, or irrevocable letter of credit drawn meeting the approval of LESSOR in its unfettered discretion, in such greater amount as is acceptable to LESSOR, to serve as a good faith escrow to secure construction of the Project. This deposit shall be accessible for payment of construction expenses by LESSEE only if and when the roof is completed on the Project, provided the roof is completed on or before December 31, 2020. This escrow shall be established in an account mutually selected by the Parties, and any release shall require mutual assent.
- b. LESSOR and LESSEE recognize that time is of the essence of this Agreement and that LESSOR will suffer financial loss, and opportunity loss, potentially over the intended thirty (30) years or more life of this Agreement if the Project is not completed within the time specified in this Agreement, plus any extensions which may be allowed. The Parties also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by LESSOR if the Project is not completed on time. Accordingly, instead of requiring such proof, and as an inducement to LESSOR to enter into this Agreement, the Parties agree that as liquidated damages for delay beyond the established completion date (but not as a penalty), LESSEE shall pay LESSOR the sum of Two Thousand dollars (\$2,000.00) for each day that expires after the Project completion date.

7. PAYMENT PROCEDURE

a. Land Rental and Other Payments due

LESSEE shall pay to LESSOR in advance on the first day of each month, without demand or invoicing, for rental for the Premises as set forth herein. LESSEE shall pay to LESSOR all other fees within thirty (30) calendar days of the date of invoices of all amounts due as set forth in this Agreement.

b. Concession Fee Payment Due

The applicable Concession Fee shall be due and payable by LESSEE to LESSOR on the fifteenth (15th) calendar day of each and every month following the month of activity and shall be delinquent if not received by LESSOR on or before the last day of the month following the month of activity. If the total paid Concession Fee increments for the Contract Year are more than the greater of the total percentage of Gross Revenues or the MAG for the Contract Year in its entirety, the LESSOR will credit such excess to amounts due from LESSEE during the following period until such excess is completely applied against such amounts.

c. Late Fees

In the event LESSEE fails to make payment within ten (10) calendar days of the dates due as set forth in this Agreement, and after LESSOR has provided LESSEE with written notice and LESSEE does not make payment within seven (7) calendar days after the date said notice is received, then LESSOR, may charge LESSEE a monthly service charge of twelve percent (12%) on an annual basis for any such overdue amount, unless a lesser sum is set as the maximum allowable under state statutes on any such overdue amount, plus reasonable attorneys' and administrative fees incurred by LESSOR in attempting to obtain payment. If LESSOR does not receive payment within seven (7) calendar days of the date of receipt of said written notice, then the monthly service charge shall retroactively commence on the date the payment was originally due.

d. LESSEE shall make all payments to the Wichita Airport Authority and in a form acceptable to LESSOR. ACH direct deposit is preferred. Bank account and routing information is available upon request. Payments made by check shall be delivered or mailed to:

Wichita Airport Authority
2173 Air Cargo Road
Wichita, Kansas 67209

or such other address as designated by LESSOR and delivered in writing to LESSEE.

- e. Bills, notices and invoices may be delivered to the LESSEE by mail, email, or personal delivery at:

Mitesh Patel
1930 N. Timberwood
Wichita, Kansas 67206

Mitesh9500@yahoo.com

or such other address as designated by LESSEE and delivered in writing to LESSOR.

8. GROSS REVENUE REPORTS

- a. LESSEE shall submit monthly to LESSOR a "Gross Revenue Report" showing, with respect to the prior month, a summary of daily business transactions, together with an accounting of all fees charged to customers. Such report shall be in form and substance satisfactory to the Director.
- b. LESSEE's Gross Revenue Report for the previous month shall be due and submitted to the LESSOR on or before the fifteenth (15th) calendar day of the month. The Parties acknowledge that the LESSOR incurs additional administrative effort if LESSEE's Gross Revenue Reports are not complete and received by the due date of each report. To compensate the LESSOR for this administrative effort, LESSEE agrees to pay the LESSOR fifty dollars (\$50) for each monthly report which is not complete, accurate, and received by its due date. This amount shall be considered additional compensation and shall become due and payable to, and received by LESSOR on or before the last day of the month in which this additional compensation is incurred.

9. BOOKS AND RECORDS

- a. LESSEE covenants and agrees that for the purposes of ascertaining the amount payable as Concession Fee, it shall keep proper books, records, and accounts in accordance with generally accepted accounting principles which shall show all sales made and services performed of any nature whatsoever, for cash, credit, or any other consideration which shall accurately reflect Gross Revenues. LESSEE agrees to operate its business so that for each sale, service or transaction whatsoever that a duplicate sales slip, or any acceptable form of documentation, is issued and prepared so that LESSOR can verify upon LESSEE's accounting and internal control processes for accurately reporting Gross Revenues.
- b. Upon request of the LESSOR, LESSEE shall furnish LESSOR within ten (10) calendar days, accurate and exact copies of all sales and excise tax reports made to the Kansas Department of Revenue.

10. AUDIT

- a. LESSEE shall employ the services of an independent Certified Public Accountant who shall furnish a written annual reconciliation of Gross Receipts subject to the terms and conditions of this Agreement to the LESSOR annually within thirty (30) calendar days following the end of each twelve (12) month period, in a form acceptable to the LESSOR.
- b. LESSEE agrees to give LESSOR or LESSOR's designated examiner access during reasonable hours for inspection of LESSEE's books and records with seven (7) calendar days advance written notice. The LESSOR shall have the right to inspect all of the records and books of account of LESSEE. The subject of the audit shall include Gross Revenues, and the LESSEE, upon request, shall make all such information available for such inspection. Such books, ledgers, accounts and records shall be available for inspection by LESSOR upon request of three (3) years from the date of such activity. If LESSEE fails to produce all of the requested books or records in Wichita, Kansas, LESSEE shall pay a \$50 penalty per day for each day in excess of the tenth (10th) calendar day up until the books and records are produced. This amount shall be considered additional compensation and shall become due and payable to, and received by LESSOR on or before the last day of the month in which this additional compensation is incurred.

- c. If, as a result of such inspection, it is established that LESSEE has understated Gross Revenues or business transacted for any Contract Year by three percent (3%) or more (after deductions and exclusions provided for herein), the LESSEE shall promptly pay to LESSOR the full cost of such inspection in addition to any additional Concession Fee owed but not theretofore paid, with any applicable interest thereon at the rate of one and one-half percent (1 1/2%) per month from the end of the month in which the discrepancy(ies) occurred. If as a result of such inspection it is established that LESSEE has overstated Gross Revenues, any overpayment of Concession Fee therefore made by LESSEE shall be credited against MAG or Concession Fee next becoming due hereunder unless the term has expired and in which case LESSEE will then be issued a refund.
- d. Any financial or other information released to the LESSOR that is considered by a LESSEE to be proprietary is still subject to release as a component of an open records request, subject to review by the City Attorney. Any financial or other information deemed to be proprietary by the LESSEE should be clearly marked as "confidential" or "proprietary" on each page on which the information appears. LESSEE should not expect the LESSOR to seek confidentiality protection for any claimed privileged or proprietary information just because the material is marked "confidential" or "proprietary."

11. OTHER FEES AND CHARGES

Unless otherwise defined in this Agreement, LESSOR may assess fees and charges to LESSEE according to rates established by LESSOR in LESSOR's then-current SCHEDULES OF FEES AND CHARGES FOR THE WICHITA AIRPORT AUTHORITY. Such Schedules may be amended from time-to-time by action of the LESSOR upon a minimum of thirty (30) calendar day's written notice. LESSOR's SCHEDULES OF FEES AND CHARGES FOR THE WICHITA AIRPORT AUTHORITY shall uniformly apply, and be enforced, with regard to all tenants and operators of the same user groups on the Airport as defined by the SCHEDULES OF FEES AND CHARGES FOR THE WICHITA AIRPORT AUTHORITY.

12. LESSEE'S IDENTITY

LESSEE must be a natural person or a state franchised business entity (such as a corporation, partnership, limited liability company, or a joint venture) under State of Kansas Law and is registered with the Kansas Secretary of State.

13. LESSEE'S RIGHTS AND PRIVILEGES

LESSEE shall have the following rights and privileges on the Premises and on the Airport:

- a. Those rights and privileges specifically authorized under this Agreement; and
- b. The right and privilege to use the Premises for the conduct of its Commercial Business as a Select Services Hotel concession under an upscale/select, high quality and nationally recognized hotel brand.
- c. The rights to install, operate, repair, and store upon the Premises all personal property and fixtures necessary for the conduct of LESSEE's lawful business.
- d. The right of ingress and egress to and from the Premises, which rights shall extend to LESSEE's invitees, contractors, subcontractors, agents, representatives and employees; subject, however, to all reasonable security regulations;
- e. The right in common with others authorized to do so, to use the common areas of the Airport, consisting of but not limited to roadways, streets, ramps, taxiways, runways, access gates, lighting beacons, and navigational aids;

14. LESSOR'S RIGHT AND PRIVILEGES

- a. LESSOR expressly reserves from the Premises:
 - 1) Mineral Rights. All gas, oil and mineral rights in and under the soil;
 - 2) Water Rights. All statutory, exempt, vested, and granted appropriation rights for the use of water, and all rights to request further appropriations for the Premises;
 - 3) Airspace. A public right of flight through the airspace above the surface of the Premises. This public right of flight shall include the right to cause or allow in said airspace, any noise inherent in the operation of any aircraft used for navigation or flight through said airspace or landing at, taking off from, or operation on the Airport. No liability on the part of LESSOR or any Tenant shall result from the exercise of this right.
 - 4) Navigational Aids. The right to install, maintain and modify and/or permit others to install, maintain and modify on the Premises visual and electronic navigational aids;

5) Entry and Inspection of Premises. The right of LESSOR, its authorized officers, employees, agents, contractors, subcontractors, authorized government agents, or other representatives to enter upon the Premises:

- i. With twenty four (24) hours advance notice, to inspect at reasonable intervals during regular business hours (*or any time without prior notice in case of emergency or lawful investigation*) to determine whether LESSEE has complied, and is complying with the terms and conditions of this Agreement;
- ii. Without notice, to inspect Premises, facilities, and equipment for compliance with laws, regulations and/or codes of the federal, state or local government, airport rules and regulations and airport standard operating procedures; and
- iii. With thirty (30) calendar days advance notice (*or any time without prior notice in case of emergency or critical system repairs*) to construct new facilities, or to perform maintenance, repair, or replacement relating to the LESSOR's support of the Premises or any facility thereon, as may be required and necessary, but LESSOR shall not be obligated to exercise this option.

6) Signage. The right to install any signage required by law, order, rule, regulation, Airport Security Program or federal directive.

7) General Provisions. The right to exercise any and all rights set out in Section 56 GENERAL PROVISIONS.

- b. Provided that exercise by LESSOR of any such reserved rights shall be without expense to the LESSEE and shall not unreasonably or materially interfere with LESSEE's use of the Premises and shall not unreasonably delay LESSEE in the exercise of its rights or the performance of its duties hereunder or increase the costs of such performance.

15. PERMITTED USE OF PREMISES

- a.** The purpose of this Agreement is to grant to LESSEE the right and privilege of the use and occupancy of the Premises on Airport Property for its construction and operation of a Select Services Hotel concession and services customarily related thereto under an upscale/select, high quality and nationally recognized hotel brand, and supporting not less than ninety (90) guest rooms, meeting rooms, parking lot, ancillary and supporting roadways, accesses, and other supporting facilities as may be customary, necessary or required in support thereof.
- b.** The LESSEE agrees to continuously maintain, preserve and uphold the upscale/select, high quality and nationally recognized hotel brand throughout the Initial and Option Terms of this Agreement in full compliance with the franchise license agreement in effect on Opening Day. Future substitution of the brand in effect on Opening Day may be approved in writing only at the sole discretion of the LESSOR, and such approval shall not be unreasonably withheld by the LESSOR so long as the brand substituted remains that of an upscale/select, high quality and nationally recognized hotel brand and all terms and conditions of this Agreement shall apply equally and in full force and effect to any future substituted brand(s).
- c.** The privileges granted herein are not exclusive, and the LESSOR shall have the right to enter into contractual arrangements with other hotel operators on Airport Property.
- d.** LESSEE shall have the right of ingress and egress on Airport Property consistent with Standard Operating Procedures, in common with others, for the benefit of its employees, customers, contractors, subcontractors, agents and representatives, and other invitees to be exercised in a reasonable manner. This right of ingress and egress is granted for activities incidental or related to LESSEE'S approved activities, and for no other purposes except as may be approved in writing by LESSOR. LESSEE shall not interfere with the rights, privileges and access of other tenants, tenant employees, patrons and invitees on the Airport. This right is subject to federal, state and local security and safety requirements and standards. As required by Kansas state statute, the Premises shall be used and occupied for aviation purposes or purposes incidental or related thereto in support of a hotel property and services related thereto.
- e.** LESSEE recognizes that other tenants now and hereafter may occupy other portions of Airport Property, and that such other tenants shall have the right to use public roadways, streets, ramps, taxiways, runways, access gates, lighting, beacons, navigational aids, or other conveniences for aeronautical operations, and these common facilities are not under an Exclusive Use lease; and LESSEE shall conduct its operations in such a manner as to not impede access by others to these common facilities, nor in any other way interfere with, nor disrupt the business of other tenants or the quiet enjoyment of their leasehold interests at the Airport.

- f.** LESSEE recognizes that this right of quiet enjoyment and unimpeded access extends to all tenants equally. LESSEE, or any other tenant, shall not have the right to overhang or otherwise invade by vegetation, equipment, improvements, any part of an aircraft, or other means or any other contrivances the leasehold premises of any other tenant or the vertical areas there above commencing at the property lease line and all areas therein. This prohibition applies to both, permanent or transitory invasions. The sole exception to this provision shall be for the navigational easement, described in the Airspace and Easement for Flight provisions of Section 56 GENERAL PROVISIONS, granted to airborne aircraft.
- g.** LESSOR reserves the right to grant and/or permit other parties the right to use any portion of Airport Property, except those Premises leased to LESSEE, on an Exclusive Use basis for any permitted purpose and upon any fair and non-discriminatory terms established by the LESSOR.
- h.** LESSEE, its affiliated entities, subsidiaries, partners, employees, agents, representatives, contractors, and subcontractors, shall not transact or otherwise engage in any other activities, business, and/or services on or from the Premises, except as described in this Agreement, unless such is provided by a separate written approval, or amendment to this Agreement, and subject to approval by LESSOR.

16. PROHIBITED USE OF PREMISES

The Premises shall not be used for any purpose not expressly required or permitted in Section 15 PERMITTED USE OF PREMISES. The following activities, services or concessions shall be specifically prohibited upon or from the Premises or any other location on the Airport without the prior written consent of the LESSOR, and then only with provisions for payment of fees, charges, or percentage of gross sales as may be deemed reasonably appropriate by the LESSOR:

- a.** Automobile rental business or franchise;
- b.** Automobile sales;
- c.** Commercial "paid" parking or valet parking services;
- d.** Vehicle, equipment or other personal property storage;
- e.** Sale, trade or bartering of fuel or lubricant products;
- f.** Any automobile servicing, including but not limited to fueling, fluid servicing, interior or exterior washing or cleaning;
- g.** No Radio/Wireless Communication Systems be allowed unless approved in writing from the LESSOR and the Federal Aviation Administration;
- h.** Revenue-producing communication systems or systems not directly applicable to

LESSEE's operations on the Premises;

- i. Commercial advertising (other than on Premises, and then only to the extent it is directly promoting LESSEE'S own hotel related services);
- j. No banners shall be displayed or installed by LESSEE on Airport Property;
- k. LESSEE shall not permit or allow its customers or employees to utilize the Premises or for any other purpose other than those specifically granted by LESSOR pursuant to this Agreement; and
- l. Any activity considered by LESSOR to not be aviation purposes or purposes incidental or related thereto in support of a hotel property and services related thereto.

17. LESSEE'S STANDARDS OF PERFORMANCE

- a. In the operation of the business to be conducted under this Agreement, LESSEE agrees to comply with the following conditions and requirements:
 - 1) LESSEE shall provide the customary facilities and services of an upscale/select quality, Select Services Hotel under an upscale/select, nationally recognized hotel brand, and supporting not less than ninety (90) guest rooms, meeting rooms, parking lot and ancillary and supporting roadways, accesses, and other supporting facilities as may be customary, necessary or required in support thereof twenty-four (24) hours per day, seven (7) days per week.
 - 2) LESSEE shall furnish well-trained personnel, including qualified, competent, and experienced supervisory personnel, and other support staff necessary to operate its hotel concession. LESSEE shall select and appoint a full-time manager and supervisors necessary to fulfill the requirements of the operation of a hotel concession.
 - 3) LESSEE's supervisors shall be qualified and experienced supervisors. Each shall be capable of acting as the manager during the full time manager's absence. Supervisors shall be trained by the manager and LESSEE so that each shall become proficient in handling all the duties of the manager. Supervisors shall be scheduled so that the manager or a supervisor is on duty at all times during business hours.
 - 4) LESSEE agrees to inform and instruct its employees with regard to operational procedures contained in this Agreement in order to ensure propriety and courteous conduct while on duty and to take positive and immediate action to correct the conduct of its employees upon notification by the Director or his representative of a breach of this Agreement in this regard.
 - 5) LESSEE agrees to maintain standards of quality of service and products consistent with a high quality, upscale/select Select Services Hotel brand name, and in accordance and compliance with the terms and conditions of any franchise license agreement which

- may be in effect now or in the future.
- 6) LESSEE shall ensure polite and inoffensive conduct and demeanor on the part of its representatives, agents, servants, and employees.
 - 7) LESSEE shall furnish good, prompt, courteous and efficient service to meet reasonable demands or requests for such services.
 - 8) LESSEE's Premises shall be clean in appearance and maintained so as to present a professional and well-kept image at all times.
 - 9) LESSEE shall not distribute, or allow to be distributed, advertising or promotional materials, flyers or leaflets at or upon Airport Property except from the lobby area of the hotel, and only subject to the provisions of this Agreement;
 - 10) LESSEE shall not allow its agents, servants or employees so engaged to conduct business in a loud, noisy, boisterous, derogatory, discriminatory, offensive, objectionable manner, or to drive in either a reckless or an unlawful fashion, or to solicit business on Airport Property except through the LESSOR's advertising concessionaire. Upon notification by the Director to LESSEE that any person employed by LESSEE is, in the Director's opinion, disorderly or otherwise unsatisfactory, such person shall be promptly removed from the Airport.
 - 11) LESSEE shall operate its business upon the Premises so that a duplicate sales slip, guest registration, or detailed sales transaction shall be issued with each sale or transaction. Such duplicate detailed sales transactions shall be considered a part of LESSEE's books and records of accounts and shall be retained pursuant to Section 10 AUDIT of this Agreement.
 - 12) LESSEE shall not misrepresent to the public its prices or the terms and provisions of its services or those of its competitors. LESSEE shall comply with all applicable rules and regulations of all governmental agencies having jurisdiction over LESSEE's activities. LESSEE shall fully inform each Airport Customer, prior to the execution of such Airport Customer's agreement for room charges, of all rates and fees applicable to such Airport Customer's rental. LESSEE (including its employees, agents and representatives) shall not refer to any rents, fees or charges required to be paid hereunder as an Airport tax or customer tax. Said rents, fees and charges shall only be referred to or characterized by the terminology as used in this Agreement or as approved in advance in writing by the Director. LESSEE shall, upon receipt of written notice, immediately cease any business practices which LESSOR determines to be deceptive.
- b. LESSEE shall furnish any and all services to the public on a fair, reasonable and not unjustly discriminatory basis to all users thereof and shall charge fair, reasonable and not unjustly discriminatory prices for each unit of service; provided, however, that LESSEE, except to the extent it may be otherwise prohibited in this Agreement, shall be allowed to

make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers, if any.

18. NON-EXCLUSIVE USE OF CERTAIN FACILITIES

LESSOR grants the LESSEE, in common with other users, the non-exclusive use of the Airport and appurtenances, together with all facilities, improvements and services which are now, or may hereafter be provided at, or in connection with the Airport. This use is limited to the purposes for which such facilities were designed and constructed, and for no other purposes, and is available on a non-exclusive use basis, according to the discretionary operational decisions of LESSOR. These facilities include, but are not limited to roadways, streets, ramps, taxiways, runways, access gates, lighting, beacons, navigational aids, or other conveniences for aeronautical operations which are not exclusively leased areas of the LESSEE or of any other tenant on the Airport.

19. DESIGN AND CONSTRUCTION

a. Franchise and Construction Standards

LESSEE shall obtain a franchise agreement acceptable to LESSOR from an upscale and premium franchisor prior to commencing construction. That Franchise shall allow and the LESSEE's constructed Improvements shall support a hotel of not less than ninety (90) guest rooms, meeting rooms, parking lot and ancillary and supporting roadways, accesses and other necessary Improvements on the Premises shown on Exhibit "A" located at 1523 S. Ridge Road. LESSEE agrees to proceed diligently to complete the Improvements. LESSEE shall not abandoned its construction until it is complete according to the schedule requirements set out in Paragraph B. LESSEE will meet the design furnishing and construction standards set by the Select Services Hotel franchisor.

b. Construction Schedule

- i. LESSEE shall commence construction no earlier than October 1, 2019 or no later than December 31, 2019.
- ii. LESSEE shall obtain a Certificate of Occupancy issued by Metropolitan Area Building and Construction Department on or before December 31, 2020.
- iii. LESSOR may extend the commencement or the Certificate of Occupancy requirement dates in its sole discretion. LESSOR will not unreasonably deny such an extension request if LESSEE has not received a determination or a Part 77 review.
- iv. LESSEE's failure to meet the construction schedule requirements shall be enforceable by LESSOR as a default under Section 49 TERMINATION BY LESSOR of this Agreement.

c. Planning, Design and Construction

LESSEE or designated representatives including the contractor and the consultants shall meet with LESSOR for a pre-design meeting to discuss the project, applicable criteria and standards, schedule, utility requirements, etc. LESSEE shall design and construct facilities and improvements on the Premises subject to the LESSOR'S express approval of LESSEE'S proposed plans and specifications. Any proposed changes prior to or during construction, shall be submitted to the LESSOR for review and approval. Such construction shall adhere to the terms of this Agreement and to any additional design and construction standards, Airport Standard Operating Procedures, and any other applicable regulations, codes and requirements set out by LESSOR or any governmental agency, or unit. Plans and specification review submittals shall follow accepted practice for such deliverables, and the LESSOR shall provide comments, as applicable, on each submittal. Upon the LESSOR's reasonable request, the LESSEE shall provide additional or supplemental submittals, as may be reasonably required, to fully understand the proposed improvements. LESSOR reserves the right to observe the work from time to time however this shall not take away from the LESSEE's responsibilities. Post construction documentation shall include a copy of all testing results and corrective actions taken.

d. Kansas Professional Surveyor

LESSEE is responsible to retain the services of a Kansas Professional surveyor to develop a tract map with legal description and set the lease pins. Such tract map and legal description shall be provided to LESSOR for review and approval.

e. Storm Water Management

LESSEE shall provide a storm water management plan as part of the plan review process. Storm water management facilities shall be designed and maintained in accordance with guidelines established by the City of Wichita, the Wichita Airport Authority, and all federal agencies. No construction, development or subsequent activities shall be allowed to cause adverse drainage issues such as erosion, blocking the flow of water, etc. No runoff shall be allowed to leave the leasehold. LESSOR shall have the option to conduct such construction as needed to insure compliance with the storm water management plan. In the event of any negative impact due to LESSEE's construction, LESSOR shall be entitled to complete restoration work at LESSEE's expense, plus an additional twenty percent (20%) administrative fee to be paid by LESSEE directly to LESSOR. If LESSEE obtains the extension of ninety (90) calendar days or more to remedy the damaging effects of stormwater flows, then LESSEE acknowledges and agrees to hold harmless and indemnify LESSOR from all claims of resulting damage, and for all administrative fines or penalties imposed due to such delay. Upon LESSOR approval of all plans and specifications and upon approval and issuance of required building permits by the Metropolitan Area Building

and Construction Department, the LESSEE and LESSEE's employees, contractors, subcontractors, suppliers, agents, and/or representatives shall have the right to enter upon the Premises and commence construction. Stormwater best management practices shall be installed and maintained as required by LESSOR, and other federal, state, and local agencies having regulatory jurisdictional authority.

f. LESSEE shall:

- 1) Provide LESSOR with surveyed coordinates and elevations by a Kansas Professional Surveyor, with accuracy tolerances not more than those defined under *FAA Order 8260.19H, Appendix C*, or as may be amended for all proposed above-grade structures and improvements on the Premises for the purpose of the LESSOR's submittal of *Form 7460-1 Notice of Proposed Alteration and Construction*;
- 2) Only commence vertical construction following formal FAA notification of a "Favorable Determination of No Hazard," and with no "Notice of Presumed Hazard (NPH) determinations;"
- 3) Administer and observe on-site construction and/or design professionals to ensure compliance with the approved plans and specifications;
- 4) Submit to LESSOR for prior approval all proposed construction modifications, amendments or changes to the plans and specifications;
- 5) Repair or replace property damaged in the construction of the facilities and improvements by LESSEE, its contractors, agents or employees; and
- 6) Provide LESSOR, within sixty (60) calendar days following occupancy of the facilities, a complete reproducible set of as-built record drawings, along with a certification of project costs for all permanent improvements.

g. Warranty of Completed Construction

Upon completion of the facility, LESSEE shall furnish a letter to LESSOR warranting that:

- 1) The improvements have been completed in accordance with the approved plans and specifications;
- 2) The improvements have been completed in a good and skilled manner;
- 3) No liens have been filed, nor is there any basis for the filing of such liens with respect to the improvements;
- 4) All improvements constituting a part of the project are located or installed upon the Premises.

h. Inaccurate or False Certifications

Inaccurate or false certifications under this Section shall be a breach of this Agreement which the Parties agree may only be remedied by specific performance whenever discovered. LESSEE's obligation to cure deficiencies in the improvements to the Premises by performance in a good and skilled manner shall survive this Agreement.

i. Plans and Permit Approvals

Plan approval described in this Section shall not be deemed an approval of Zoning Codes, Building Codes, or any other approval required by the City of Wichita or other local agencies having jurisdictional authority for the enforcement of local codes. LESSEE shall indemnify and hold the LESSOR harmless for any liability for regulatory or governmental approvals or the failure to obtain the same. LESSEE shall be responsible for obtaining all permits and approvals required for the construction, maintenance, operation and use of all facilities on the Premises. LESSEE shall use reasonable efforts to coordinate the construction of the improvements with time schedules established by the LESSOR, should other construction be occurring at the Airport which may be impacted by this project.

j. Utility Services for Construction Project

LESSEE agrees, at its own expense, to connect to all utility providers as available to offer the services that LESSEE desires for the Premises. LESSEE shall obtain electrical service, and natural gas service, and use the pre-installed campus conduits for telecommunications and data services as available exclusively from LESSOR. LESSEE utility connection obligations shall be:

- 1) construct the secondary electrical service to the Premises, including, without limitation, the transformer and transformer pad;
- 2) provide water service to the Premises running from the water main;
- 3) construct storm water sewer facilities;
- 4) provide sanitary sewer service to the Premises running from the sanitary sewer main, including if applicable, an oil and water separator, running from the sanitary sewer main;
- 5) If LESSEE desires natural gas service, then LESSEE agrees to allow LESSOR to install, at LESSEE's expense, gas line to the Premises by constructing a gas line running north to south from the gas main and install a gas meter;
- 6) construct a communication conduit system from LESSOR's communication network; and
- 7) be responsible for all temporary construction utilities.

k. Procedure for Reimbursement of Construction Project

To the extent applicable, LESSOR shall provide to LESSEE a preliminary written scope of services and cost estimate for design and construction of the agreed specific elements of LESSEE's construction project ("Project") to be undertaken by LESSOR. Upon LESSEE's written approval of the preliminary scope of services and cost estimate, LESSOR shall plan and construct its portion of the Project using competitive bidding controlled by City Ordinances and the City's Purchasing policies. LESSEE agrees to pay the invoice(s) for the completed work within thirty (30) calendar days of billing.

- l.** LESSOR shall notify LESSEE in writing of change orders impacting completion of the specified Project elements. LESSOR shall proceed with the documented changes only after receiving LESSEE's written approval of the change order, and all delay risks and expenses will be LESSEE's additional obligation. All invoices will include an additional twelve percent (12%) administrative fee, applied to the total cost incurred by the LESSOR in providing the specified elements. The fee represents the LESSOR's costs, to include procurement services, approval processes and Project management. It does not include a profit component.
- m.** LESSEE has an affirmative duty to obtain from LESSOR an invoice for the most recent cost estimate for the work, or for the total cost if completed but not yet invoiced, before LESSEE obtains and closes final Project closing. Failure of the LESSEE to reimburse LESSOR for the costs of providing the completed specified elements of the Project shall constitute a default of this Agreement governed by the terms under Section 49 TERMINATION BY LESSOR.

20. CONSTRUCTION COSTS

- a.** LESSEE agrees to invest a minimum initial capital investment of seven million dollars (\$7,000,000) in new facilities and Improvements in the Project. LESSEE further agrees to make additional and on-going upgrade capital investments in facilities and Improvements as may be required by the franchise license agreement to maintain the franchise license with an upscale/select, high quality and nationally recognized hotel brand.

- b. LESSEE agrees to pay all costs incurred in connection with construction of any new structures, facilities and improvements, and future additions, improvements and alterations, unless otherwise expressly agreed to in writing by the LESSEE and LESSOR. LESSEE agrees to make direct payment to all materials, product and service providers for all such costs as they are incurred. LESSEE shall have no right, authority, or power to bind LESSOR or any interest of LESSOR in the Premises, for the payment of any claim for labor or material or for any charge or expense incurred in the erection, construction, operation, or maintenance of said improvements and Premises.
- c. Before beginning construction, LESSEE shall, by agreement with its contractor or otherwise, provide performance, labor and material payment bonds and statutory bonds with respect to all improvements to be constructed on the Premises in the full amount for the Project contract. The general contractor under any such contract shall be the principal, and a surety company or companies qualified to do business in Kansas shall serve as surety. Such performance, labor and material payment bonds shall name the Wichita Airport Authority and the City of Wichita, Kansas as the obligees. Satisfaction of this requirement shall not be the basis for an extension of the Section 19 DESIGN AND CONSTRUCTION construction period.
- d. For any construction on the Premises, LESSEE shall purchase and maintain a builder's risk insurance policy, or require its prime contractor to carry such policies, in a sum equal to the full Project replacement value as set forth in Section 28 LIABILITY INSURANCE. Builder's Risk coverages shall be in effect from the date of or prior to the Construction Start Date and continue in force until all financial interest ceases. LESSEE shall also purchase and maintain any other insurance policies described in Job Site Requirements document relating to construction of the Premises. All other coverages shall remain in force as described in the Job Site Requirement document. The Wichita Airport Authority and the City of Wichita shall be named as additional insured on such policies, and all policies shall be written by insurers subject to LESSOR's reasonable approval.

21. FUTURE ALTERATIONS AND IMPROVEMENTS

- a.** Once the initial improvements are completed, LESSEE may construct facilities and improvements on the Premises subject to the LESSOR'S prior written approval of LESSEE'S proposed plans and specifications. All construction shall be performed in a good and skilled manner with adherence to the terms and conditions of this Agreement, and all applicable federal, state or local rules, regulations, codes, and Airport Standard Operating Procedures.
- b.** No construction, development or subsequent activities shall be allowed on the Premises causing adverse drainage issues such as erosion, blocking the flow of stormwater flow, or introducing stormwater flow across the leasehold of other Airport tenants. No stormwater runoff shall be allowed to leave the Premises except as may be allowed, and in the manner prescribed or approved, in advance by the LESSOR and subject to the design of a licensed civil engineer.
- c.** If required by LESSOR, LESSEE agrees to furnish a letter to LESSOR warranting that:
 - 1.** The improvements have been completed in accordance with the plans and specifications;
 - 2.** The improvements have been completed in a good and skilled manner;
 - 3.** No liens have been filed, nor is there any basis for the filing of such liens with respect to the improvements;
 - 4.** All improvements constituting a part of the project are located or installed upon the Premises; and
 - 5.** The actual total construction cost of the approved project.
- d.** Additions or alterations must be designed and constructed in a manner that will not weaken or compromise the structural strength, or reduce the value or functionality of the Premises or existing improvements thereon. Any approvals issued under this Section shall be deemed approvals of the Wichita Airport Authority, as LESSOR, in its capacity as the property owner and landlord, but shall not be deemed approvals as required for local zoning codes, local building codes, or any other approval or permit required by the Sedgwick County Metropolitan Area Building and Construction Department in a regulatory or governmental capacity. Notwithstanding any other indemnity provision, LESSEE shall indemnify and hold the LESSOR harmless for any liability for regulatory or governmental approvals or the failure to obtain the same. LESSEE shall be responsible for obtaining all permits and approvals required for the construction, maintenance, operation and use of all Facilities on the Premises.

22. CONSTRUCTION INSPECTIONS

LESSOR shall have the right at any reasonable time prior to the completion of any construction of facilities and improvements or future alterations and improvements thereto, to enter upon the Premises for the purpose of inspecting the construction thereof, to determine whether or not the improvements are being constructed substantially in accordance with LESSOR approved plans and specifications. If at any time during the progress of such construction, it is determined that the improvements are not being constructed substantially in accordance with LESSOR approved plans and specifications, upon receipt of written notice from LESSOR, LESSEE shall make or cause to be made such reasonable alterations as may be required to cause the improvements to substantially conform to the plans and specifications. However, LESSOR has no duty to undertake such inspections, and LESSOR shall not be held to any duty of care regarding such inspections, if conducted.

23. MAINTENANCE AND REPAIR

- a. LESSEE shall maintain, repair, and keep at its sole cost and expense, the interior and exterior of Premises and improvements, including all structures, pavements, landscaping, fixtures and appurtenances thereto in its original condition, subject to reasonable wear and tear, and keep the Premises free of trash, debris and obstructions. LESSEE, at its sole cost and expense, shall maintain and keep in good repair the entirety of the leased Premises and all improvements placed thereon.
- b. Should LESSEE not meet the established maintenance and repair obligations for all improvements, LESSOR may, but is not required to, accomplish the needed repairs by Airport staff or a contract with a third party, with such repairs being made at LESSEE's expense. A twelve percent (12%) administrative fee shall be charged on any task that is performed by the LESSOR or its agent on behalf of LESSEE upon thirty (30) calendar days prior written notice of its intent to do so. The fee shall be applied to the total cost incurred by the LESSOR in performing the task. The fee represents the LESSOR's cost to manage the task including procurement services, approval processes, management staff time, supervision and overhead. In case of emergency action taken in order to protect against personal injury or property damage but not limited to, for which no notice is necessary, LESSOR shall charge the same cost to the expense of LESSEE and a twenty percent (20%) administrative fee.

24. FACILITY ASSESSMENT

Commencing on the fifth anniversary of the Agreement Commencement Date, and by no later than the anniversary date of each fifth year thereafter during the Term of this Agreement, the LESSEE shall provide the LESSOR with a "Condition Assessment Report" of the leased Premises and site improvements thereon, prepared by either a licensed contractor, engineer or architect ("A/E"), and licensed to do business in the State of Kansas. This Condition Assessment Report shall address the current condition, the contractor's or A/E's professional opinion of the useful life remaining of the structures and systems, and the contractor's or A/E's professional opinion of repairs, replacements, or refurbishments recommended to maintain the operationally useful state and condition of the Premises. Condition Assessment Reports shall primarily focus on major structural systems and components, including but not limited to: pavements, utilities, building structures, roofs, and heating/ventilation/air conditioning (HVAC), plumbing, and electrical systems.

25. UTILITIES

- a. LESSEE shall pay all costs for utility services (whether for installation, service, administration, connection, or maintenance thereof) used by LESSEE at or upon the Premises with no responsibility or expense accruing or ascribed to LESSOR, including all permits, licenses or authorizations necessary in connection therewith. Such payments by LESSEE shall be made directly to the utility supplier or service provider, except that if such utilities should be supplied by the LESSOR, then in this event, LESSEE shall pay those costs to LESSOR within thirty (30) calendar days after receipt of LESSOR's invoice. LESSOR agrees that any such costs invoiced to LESSEE will be based on the rates charged to LESSOR by utility supplier, plus reasonable capital and administrative recovery costs. If LESSEE is allowed by LESSOR to encroach over areas reserved for installation and operation of utilities, then LESSEE shall bear all responsibility for restoration of LESSEE's own property in case of repairs by the LESSOR or the utility owner.
- b. The LESSEE agrees to indemnify and hold LESSOR harmless, in LESSOR'S capacity as utility provider, for defects, failures, or reduced, diminished, or cessation of service furnished by LESSOR or its suppliers, and LESSOR further reserves the right to temporarily terminate the supply, or shutdown utilities to, from, or upon the leased Premises if reasonably necessitated for purposes of repairs, replacement, modifications, extensions, or threats to public health, welfare, and safety.

- c. If LESSEE requires utilities beyond what is currently available, LESSEE agrees to pay the full cost and expense associated with the upgrade/extension/installation of all such utilities related to its use of the Premises, and to comply with all provisions for maintaining such utilities.
- d. The LESSOR reserves for itself, and its utility providers, the right to upgrade, extend, install, maintain and repair all utilities and services on or across the Premises, whether or not such services or utilities are for the benefit of LESSEE. The LESSOR shall take all reasonable care and diligence to protect existing improvements and utilities, and shall avoid to the greatest extent possible, any unreasonable interference or interruption to LESSEE'S operations.
- e. LESSEE shall design and install all utilities used by LESSEE subject to the express approval of the LESSOR prior to installation. All utilities, including but not limited to, electrical, gas, data and communications utilities installed or caused to be installed shall be underground, and no utility services or other cables or wires shall be installed on poles or otherwise above ground. Unless otherwise provided in this Agreement, all conduits or ducts installed shall be considered fixtures as defined under Section 42 TITLE TO FACILITIES, IMPROVEMENTS AND FIXTURES, and shall become the owned property of LESSOR. All utility facilities installations shall meet the requirements of Section 21 FUTURE ALTERATIONS AND IMPROVEMENTS of this Agreement.
- f. Wastes not legally permitted and authorized for disposal into the storm and/or sanitary drainage system shall not be discharged, connected or introduced into storm and/or sanitary drains and the storm and/or sanitary drainage system. LESSEE shall take all reasonable precautions to prevent the discharge of material into any drainage system that would create interference with the flow therein, or that would cause a hazard or unlawful contamination thereto. A copy of LESSEE'S Stormwater Pollution Prevention Plan and Spill Prevention Control and Countermeasure Plan shall be submitted to the LESSOR upon the LESSOR'S request.

26. SNOW AND ICE REMOVAL

- a. LESSEE shall be responsible for all snow and ice removal on the Premises defined as follows:
- 1) LESSEE shall engage in snow and ice removal only within LESSEE's Premises.
 - 2) Snow removal operations shall not block or interrupt the business of other Airport tenant leaseholds.
 - 3) LESSEE shall not move or deposit snow piles off the Premises onto public streets or roadways.
 - 4) Snow removal and ice mitigation on public streets and roadways is the responsibility of the WAA.
 - 5) Landside areas shall be maintained to a winter surface condition safe for employees and the public accessing the facility.
 - 6) The use of urea is expressly forbidden by City of Wichita Storm Water Discharge regulations.
 - 7) Commercially available road salt, magnesium chloride, calcium chloride, and other materials must be approved by the manufacturer for pavement deicing purposes.
 - 8) Snow piles and accumulation may be stored on designated and pre-approved locations on the premises so long as such piles or accumulations comply with the provisions from the Standard of Operating Procedures.
 - 9) All snow and ice removal contractors shall maintain a general liability insurance policy of not less than \$1,000,000 limit, naming LESSEE, WICHITA AIRPORT AUTHORITY, and the CITY OF WICHITA as additional insureds.

27. EXTERIOR SIGNS AND ADVERTISING

- a. LESSEE agrees that no exterior signs or advertising material shall be erected on the Premises or on any improvement or facility on the Premises unless the design and layout of such signs and advertising material, together with the materials and method of construction of such signs and advertising material, shall have been approved in advance in writing by LESSOR, which approval shall not be unreasonably withheld or unduly delayed.

- b. LESSEE shall not erect, install, operate, nor cause or permit to be erected, installed, or operated upon any non-leased Premises of the Airport property, any signs, banners, or other similar devices for its own business, or the business of others. This provision shall not have the effect of limiting or restricting LESSEE's right to enter into an agreement with LESSOR'S authorized and permitted marketing, advertising or signage agency for the display of informational, marketing or advertising media at approved designated locations on Airport property.
- c. LESSEE shall have no right to erect or install, or cause or consent to be erected or installed any commercial outdoor advertising by an outdoor commercial advertising agency.

28. LIABILITY INSURANCE

- a. LESSEE shall procure, maintain and carry, at its sole cost, in accordance with and for the Term of this Agreement all insurance, as required per the amounts as set forth in this Section. Insurance shall be furnished by a company meeting the reasonable approval of the LESSOR. Policy deductible amounts also require reasonable approval of the LESSOR.
- b. Insurance certificates shall be issued on a standard ACORD form or such other documentation as may be acceptable to LESSOR in its discretion and include the NAIC number of the insuring company. Each insurance company's rating, as shown in the latest Best's Key Rating Guide, shall be no less than A-VII, unless otherwise approved by the LESSOR, or from a Workers' Compensation pool approved by the State of Kansas. Insurance certificates must be received and approved by the LESSOR prior to occupancy. LESSOR retains the right to require changes in the character, coverages and amounts of coverage commensurate with changes in the LESSEE'S use of the Premises. All policy deductibles shall be shown on the certificate of insurance and meet the approval of the LESSOR.
- c. The failure of LESSOR to reject the LESSEE'S proffered insurance shall not be deemed to constitute an acceptance by the LESSOR of deficient insurance coverage. If the LESSEE fails to procure or maintain any of the specified coverages, the LESSOR has the right, but not the obligation, to secure the coverage and charge the cost to the LESSEE along with a 20% administrative fee.

- d. The LESSEE shall be responsible for determining the types and limits of insurance coverage required by any approved SUBLESSEE, permittee or contractor of the LESSEE commensurate with the type of activity and associated risk levels. At a minimum, any SUBLESSEE shall carry Workers' Compensation, general liability (minimum of \$1,000,000 per occurrence) and automobile liability (minimum of \$500,000 combined single limit). LESSEE shall require in any approved sublease that the Wichita Airport Authority and the City of Wichita shall be added as primary and non-contributory additional insureds on the SUBLESSEE'S general liability policy.
- e. The requirements, procurement and carrying of the required insurance shall not limit any of the LESSEE's obligations or liability under this Agreement or as a matter of law.
- f. Where "minimum limits" of insurance are specified in this Section, such minimum insurance limits are required and considered by LESSOR to be the lowest insured amounts acceptable under this Agreement. The LESSEE is not limited or restricted whatsoever in securing additional insurance coverage and higher insured limits than those specified herein if, at the LESSEE's determination and discretion and commensurate with the type of activity and associated business and operational risk, additional coverage and higher limits are necessary and appropriate.
- g. Insurance shall include the following terms, conditions and minimum limits:

1) WORKERS' COMPENSATION

LESSEE shall maintain Workers' Compensation insurance to cover the statutory requirements of the Workers' Compensation laws of the State of Kansas for its operations on the Premises, and when applicable, to Federal Laws and Voluntary Compensation and Employer's Liability (including occupational disease) coverage.

2) AUTOMOBILE LIABILITY

LESSEE shall maintain automobile insurance, which shall include all owned, non-owned and hired automobiles used on the Premises, and shall have minimum bodily injury and property damage limits as outlined herein.

Combined Single Limit	\$1,000,000 Each Accident
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3) COMMERCIAL GENERAL LIABILITY

LESSEE shall maintain commercial general liability insurance on an occurrence form which shall include on-going operations, product/completed operations (minimum of two years following the project completion) and personal and advertising injury, and liability assumed under contract. Minimum limits, as outlined herein, shall be:

Annual Aggregate	\$2,000,000
Each Occurrence	\$1,000,000

The Wichita Airport Authority and the City of Wichita shall be added as primary and non-contributory additional insureds.

4) UMBRELLA/EXCESS LIABILITY COVERAGE

The LESSEE shall provide minimum Umbrella/Excess liability limits (excess of all coverages other than Workers' Compensation) of:

Each Occurrence Limit	\$5,000,000
Annual Aggregate Limit	\$10,000,000

- h. The Wichita Airport Authority and the City of Wichita shall be added as primary and non-contributory additional insureds covered under this pollution liability coverage.
- i. LESSEE agrees that in the event of future changes in the law or upon notice by the LESSOR, the minimum levels of insurance required by this Section may be increased within the bounds of commercial reasonableness.
- j. LESSEE agrees, prior to the commencement of the Agreement, to provide LESSOR with copies of certificates, evidencing that such insurance is in full force and effect, and stating the terms thereof. This Agreement shall not commence until certificates of insurance satisfactory to LESSOR are supplied by LESSEE. LESSEE shall provide LESSOR updated certificates of insurance the earlier of annually, or upon renewal, which certificate shall demonstrate the coverage required in this Section for the ensuing twelve month period. Failure to maintain satisfactory insurance policies in force shall constitute grounds for termination of this Agreement as set forth in Section 49, TERMINATION BY LESSOR.
- k. LESSEE shall be solely responsible, and at its sole discretion, for obtaining insurance policies that provide coverage for losses of LESSEE-owned personal property. LESSOR shall not provide such insurance coverage for LESSEE-owned personal property, or be responsible for payment of LESSEE's cost for such insurance.

29. ALL RISK PROPERTY INSURANCE

- a.** LESSEE, at its expense, throughout the Term of this Agreement, shall cause any facilities, structures, fixtures and improvements on the Premises to be insured against loss or damage by fire or other casualty equal to the full replacement value thereof and by an all risk coverage policy furnished by a company licensed to do business in Kansas. Such policy shall not exclude, or in the alternative, shall carry full coverage endorsements for damage from tornado, hail, and sewer backup, and shall furnish LESSOR a certificate evidencing such insurance. The first dollar proceeds of any payments made under such insurance policy or policies shall be used to replace, restore, rehabilitate or reconstruct the insured facilities, subject to the provisions governing damage or destruction found in Section 40, Damage or Destruction. LESSEE agrees, prior to the commencement of the Agreement, to provide LESSOR with copies of all policies or certificates evidencing that such insurance is in full force and effect, and stating the terms thereof. This Agreement shall not commence until policies of insurance satisfactory to LESSOR are supplied by LESSEE.
- b.** No self-insurance nor large deductible policies will be accepted for any of the required coverages.
- c.** LESSEE shall provide LESSOR updated certificates of insurance the earlier of annually, or upon renewal, which certificate shall demonstrate the coverage required in this Section for the ensuing twelve (12) month period. Failure to continuously maintain satisfactory insurance policies in force shall constitute grounds for termination of this Agreement.
- d.** In lieu of LESSEE insuring the Premises against loss or damage by all risk coverage, LESSEE shall have the option to request that the facilities and improvements on the Premises be insured under the LESSOR's blanket policy. Upon such request the LESSEE agrees to pay the premiums for the cost of the insurance, plus any deductible required to be paid by LESSOR under its blanket policy for any claim attributable to losses of the Premises. The value of the facilities and improvements shall be determined by LESSOR.
- e.** LESSEE shall be solely responsible for obtaining insurance policies that provide coverage for losses or damage of LESSEE-owned (personal) property. LESSOR shall not provide such insurance coverage for LESSEE-owned (personal) property, or be responsible for payment of LESSEE's cost for such insurance.

30. INDEMNITY

- a. To the extent allowed by law LESSEE, shall protect, defend and hold LESSOR and the City of Wichita and its officers, elected officials, agents and employees completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court cost and expert fees), or other liability of any nature whatsoever arising out of or incident to this Agreement and/or the use or occupancy of the Premises or the acts or omissions of LESSEE's officers, agents, employees, contractors, subcontractors, licensees or invitees, regardless of where the injury, death or damage may occur, except to the extent such injury, death or damage is caused by the negligence of LESSOR. The LESSOR shall give to LESSEE reasonable notice of any such claims or actions.
- b. To the extent allowed by law, LESSOR shall protect, defend and hold LESSEE, its officers, members, managers, agents and employees completely harmless from and against all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury to or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs and expert fees), or other liability of any nature whatsoever arising out of or incident to this Agreement and/or the use or occupancy of the Premises or the acts of omissions of LESSOR's officers, agents, employees, contractors, subcontractors, licensees or invitees, regardless of where the injury, death or damage may occur, except to the extent such injury, death or damage is caused by the negligence of LESSEE. The LESSEE shall give LESSOR reasonable notice of any such claims or actions.
- c. Should LESSEE, its employees, subcontractors, suppliers, agents, customers, and/or representatives cause any violations of federal, state or local law, regulation or ordinance, and should LESSOR be cited for a fine or penalty for such violation, LESSEE agrees to reimburse LESSOR for any monetary fine or penalty which may be imposed on LESSOR. However, nothing herein shall prevent the LESSEE from contesting the legality, validity or application of such fine or penalty to the full extent LESSEE may be lawfully entitled, nor require LESSOR to pursue such a contest on LESSEE's behalf.
- d. The provisions of this Section shall survive the expiration or termination of this Agreement to the extent that they relate to liabilities, losses, suits, claims, judgments, fines or demands arising from or incident to events occurring during LESSEE'S occupancy of the Premises. The LESSEE shall use counsel reasonably acceptable to LESSOR in carrying out its obligations in this Section.

31. OWNERSHIP

LESSEE shall retain a minimum of fifty one percent (51%) of company ownership interest as they exist at the time of execution of this Agreement for a minimum of two (2) years after the Agreement Commencement Date. If such ownership interest changes outside this parameter during this two (2) year period, the LESSOR shall have the right to void the Agreement and negotiate a new agreement with the new or modified ownership entity at prevailing market terms for land and facilities.

32. TRANSFER OF OWNERSHIP

As of the Commencement Date of this Agreement and thereafter throughout the Initial and any Option Terms, any individual or group of individuals or any other entity owning in excess of a majority equity interest in LESSEE who transfers ownership of a majority or more of the LESSEE without the prior written approval of LESSOR, which shall not be unreasonably withheld, shall have submitted a material breach of this Agreement for which LESSOR may terminate the same under the provisions of Section 49 TERMINATION BY LESSOR hereof. Moreover, at least ninety (90) calendar days prior to any contemplated, proposed, anticipated or imminent ownership transfer, LESSEE shall submit a written request to LESSOR showing good and sufficient financial worth and adequate experience in the operation and provision of commercial hotel services on the part of the contemplated purchaser or purchasers and evidencing the intent of such contemplated purchaser or purchasers to expressly assume in writing and agree to be bound by and fulfill all of the terms, covenants, obligations and agreements contained in this Agreement.

33. ASSIGNMENT

- a. With the exception of intra-company assignment, delegation, re-organization, or transfer to a parent "holding" company or subsidiary, LESSEE shall have no right to assign, delegate, or transfer its tenancy, or any of its rights or duties pursuant to this Agreement without the prior written consent of LESSOR. An assignment, transfer, or delegation shall be defined as any transaction involving twenty-five percent (25%) or more of the ownership interest in the LESSEE entity. Prior to LESSOR'S consideration of any assignment, the LESSOR shall evaluate, consent, or withhold consent of assignment to any proposed assignee based, in part, on the following: 1) historically successful operational experience; 2) capability and willingness to satisfy the requirements of financial capabilities; and, 3) creditworthiness and credit history of the proposed assignee. Any assignment, delegation, or transfer so made by LESSEE, and so permitted by LESSOR, shall be subject to all terms, conditions, and other provisions of this Agreement. Any attempted assignment, delegation, or transfer in violation of this Section shall be void and have no force or effect whatsoever, and at LESSOR'S sole discretion, is grounds for Termination by LESSOR under Section 49 TERMINATION BY LESSOR of this Agreement. No delegation shall be allowed, and under any permitted assignment, the LESSEE as Assignor shall remain responsible to LESSOR for all rents and charges incurred by the allowed Assignee in case of Assignee's default of its obligations.
- b. An Agreement Assignment Fee equal to one percent (1%) of the transaction price, shall be paid to the LESSOR, the Wichita Airport Authority, in conjunction with any Agreement assignment to a third party; however, such Agreement Assignment Fee shall not exceed one hundred fifty thousand dollars (\$150,000). This Agreement Assignment Fee shall be paid to the Wichita Airport Authority at the time of transfer transaction closing.

34. SUBLEASING, PERMITTING AND CONTRACTING

- a.** LESSEE shall not sublease, rent, or permit any persons, firms or corporations to occupy any part of the Premises, or to provide any type of commercial or non-commercial operation on the Premises without the prior written consent of LESSOR, and then consent may be granted by LESSOR only under the following conditions:
- 1)** All sublease(s) must comply with Sections 15 PERMITTED USE OF PREMISES and 16 PROHIBITED USE OF PREMISES of this Agreement, and shall be reviewed for compliance by LESSOR to that end. Any arrangement for the subleasing of space must be in conformance with the use of the Premises outlined in this Agreement, unless expressly approved otherwise in writing by LESSOR.
 - 2)** LESSEE must keep current records on file and available for LESSOR'S inspection that describes the nature, and documents the legitimacy of the sublessee's business, including all current municipal, state, or local licenses or permits required for the conduct of sublessee's business.
 - 3)** LESSEE hereby agrees that it shall incorporate language acceptable to LESSOR into all of its sublease agreements, placing on any sublessee and that sublessee's affiliated entities, customers, employees, invitees, contractors, and subcontractors similar restrictions, as may be appropriate to its approved uses as those which bind LESSEE and its use of the facility through this Agreement. LESSEE shall also incorporate and make reference to this Agreement, as may be amended from time to time, to ensure sublessee's operations and conduct are subject to and are in compliance with the terms and conditions of this Agreement, as may be amended from time to time. Any sublease agreement shall explicitly state that it is subordinate to this Agreement, and that the sublessee shall never obtain rights in the Premises greater than those held by LESSEE under this Agreement, or as may be amended. Any sublessee shall be specifically subject to eviction from the Premises as a result of termination, cancellation, or expiration of this Agreement, irrespective of sublessee's state of compliance with the terms of its sublease.
 - 4)** LESSEE shall at all times during the term(s) of approved sublease(s), remain responsible to LESSOR for the compliance of its sublessees with the terms and conditions of any approved sublease and with this Agreement. LESSOR shall look to LESSEE directly to satisfy any failure of sublessee to comply with these documents.

- 5) Consent to one sublease permit or subcontract shall not be deemed consent to any subsequent sublease permit or subcontract. Prior written consent of the LESSOR shall be required for each sublease permit or subcontract executed by the LESSEE.
 - 6) Any arrangements and terms must be in the form of a written instrument, must be for purposes and uses of the Premises as authorized under this Agreement, and shall be subject to the provisions of this Agreement. LESSEE shall submit a copy of such proposed instrument at the time of requesting consent of LESSOR. LESSEE shall not sublease, rent or permit any persons, firms or corporations to occupy any part of a leased Premises, or to provide any type of commercial or non-commercial activity, operation or services, or not specifically allowed under this Agreement, on the leased Premises without having first presented the LESSOR with a proposed sublease agreement or operating permit for review, and received the prior written approval of the LESSOR.
 - 7) In such cases where the LESSOR does grant written approval, the LESSEE shall pay to the LESSOR in lump-sum payment or monthly payments over the term of the sublease, an amount equal to fifty percent (50%) of the difference between those gross rentals due to LESSOR by LESSEE, and the gross rentals paid to the LESSEE by the subtenant for the Premises subleased.
- b. It is understood and agreed that this Section is not intended to apply to such contracts for the provision of goods and services by LESSEE to its customers and clients as are common in the hotel and hospitality industry, nor such contracts which may be entered from time-to-time for the provision of goods and services to the LESSEE as are common in the hotel and hospitality industry, or for services of a maintenance and repair nature, so long as such contracts do not involve the subleasing of the Premises or portions thereof.

35. GRANTING OF EASEMENTS

LESSEE shall not grant easements, licenses and other rights or privileges in the nature of easements with respect to any land on the Airport, or release existing easements, licenses, right-of-ways and other rights or privileges; and, LESSEE agrees, to the extent that it may legally do so, that it will execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right-of-way or other right or privilege or any such agreement or other arrangement, upon receipt by LESSEE of: a copy of the instrument of grant or release or of the agreement or other arrangement; and, a written application signed by the LESSOR requesting execution and delivery of such instrument, provided that, such grant or release is not detrimental to the proper conduct of the business of LESSEE, and such grant or release will not impair the effective use or interfere with the efficient and economical operation of the facilities. LESSEE shall not request any payment or other consideration for such execution, the same being amply supported by the promises exchanged in this Agreement. Any payments or other consideration received by LESSOR for any such grant or with respect to or under any such agreement or other arrangement shall be and remain the property of LESSOR. The obligations of this Section shall survive termination of this Agreement.

36. NON-INTERFERENCE WITH AIRPORT OPERATIONS

- a. LESSEE covenants and agrees that it shall not allow any condition on the Premises, nor permit the conduct of any activity on such Premises, which shall materially or adversely affect the development, improvement, operation, or maintenance of the Airport or its facilities, nor shall LESSEE use or permit the Premises to be used in any manner which might interfere with the landing and take-off of aircraft from the Airport or otherwise constitute a hazard to the general public, or to LESSOR's tenants or the customers, agents, invitees, contractors, representatives and employees of those tenants.
- b. LESSEE covenants and agrees that it shall not allow any condition on the Premises, nor permit the conduct of any activity on such Premises, which shall materially or adversely affect, infringe upon, block or interrupt the operations and business activity of other airport tenant leaseholds.

37. COOPERATION WITH AIRPORT DEVELOPMENT

LESSEE understands and agrees that LESSOR may pursue Airport development, improvements and maintenance activities from time-to-time that may directly or indirectly affect the Premises and other areas of the Airport. LESSEE agrees to work cooperatively and in good faith with the LESSOR and other tenants and contractors in development, improvement and maintenance activities to minimize or mitigate any disruptions. If requested by the LESSOR, LESSEE shall cooperate with and assist the LESSOR to the greatest extent possible in the development and implementation of any plans, designs, ingress/egress, or transition that may arise in connection with such Airport development, improvement, and maintenance activities. LESSOR may temporarily or permanently close, re-route, or consent to the closing or re-routing of any method of ingress or egress on the Airport, so long as reasonable means of ingress and egress to the Airport are maintained. LESSOR may temporarily close runways, taxiways, ramps or portions thereof for purposes of maintenance, replacement, re-construction or expansion. Exercise by LESSOR of any such Airport development, improvement, or maintenance shall be paid by LESSOR. LESSEE shall not be entitled to any compensation for loss of revenue, business interruption, relocation, temporary storage rental, additional labor costs, additional increased fuel costs, cycles on engines, or any other expense attributable to the development, improvement, or maintenance on the Airport.

38. SURRENDER OF POSSESSION AND RESTORATION

- a. LESSEE shall yield and deliver to LESSOR possession of the Premises at the expiration or termination of this Agreement in good condition in accordance with LESSEE's obligations in this Agreement, except for reasonable wear and tear. LESSEE is relieved of financial responsibility for fire or other casualty for which full insurance compensation has been paid as agreed. LESSEE shall, at its expense, deliver the Premises in good order and condition, including:
- 1) cleaning and hauling away all supplies and trash;
 - 2) remove and legally transport and dispose of all fuel storage and dispensing facilities, equipment and systems and auxiliary and ancillary appurtenances thereto;
 - 3) removing by legal means all materials or other substances classified as hazardous;
 - 4) leaving in operating condition all bulbs and ballasts in Exclusive Use areas;
 - 5) replacing all broken glass; and
 - 6) return to LESSOR all keys and security access and ID media to all doors and gates.

- b. LESSEE, at LESSEE's expense, shall remove prior to the termination or expiration of this Agreement all fixtures, non-attached equipment and personal property placed by LESSEE on or about the Premises herein leased, subject to LESSEE's repairing any damage thereto caused by such removal and subject to any valid lien which LESSOR may have on that property for unpaid rents, expenses or fees.
- c. In the event LESSEE does not remove all of its equipment and personal property within thirty (30) calendar days after the termination or expiration of this Agreement, any remaining property shall be considered abandoned and LESSOR may take possession and use for its own purposes, or alternatively dispose of said property without any further responsibility or liability to LESSEE. The net disposal costs of such property shall be the financial obligation of LESSEE.

39. REMOVAL AND DEMOLITION

LESSEE shall not remove or demolish, in whole or in part, any improvements upon the Premises without the prior written consent of the LESSOR, which may, at its discretion, condition such consent upon the obligation of LESSEE replacing the same by a reasonable improvement specified in such consent. LESSEE shall obtain written consent before commencing demolition and restoration as described under Section 19 DESIGN AND CONSTRUCTION. Failure to obtain this consent shall entitle the Authority to such compensation as is necessary to restore the affected improvements.

40. DAMAGE OR DESTRUCTION

- a. In the event that facilities or improvements on the Premises are damaged or destroyed in whole or in part by fire, lightning or any other peril or other casualty during the Term of this Agreement, this Agreement shall remain in full force and effect and LESSEE shall proceed with due diligence to repair, restore, rebuild or replace said damaged or destroyed property or parts thereof to as good a condition as all affected properties were in immediately prior to such damage or destruction, subject to such alterations as LESSEE may elect to make and are permitted in this Agreement. All proceeds from the insurance policies related to such damage or destruction shall be first applied to cover the cost of such repairs or restoration. In alternative, and in LESSOR's discretion to allow and LESSEE's election to exercise, LESSEE may be released from this Agreement upon payment of all demolition and removal costs for damaged or destroyed improvements and payment therefor at the fair market value.

- b. In the event the improvements are damaged or destroyed in whole or in part by fire, lightning or any other peril or casualty not resulting in whole or in part from the actions of the LESSEE during the term of this Agreement, and such damage, destruction or loss exceeds fifty five percent (55%) of the value of the property as it existed prior to the casualty loss, LESSEE shall have the election, indicated by written notice given to LESSOR within one hundred and eighty (180) calendar days after the occurrence of such event, not to repair, restore, rebuild or replace the improvements. Upon such election by LESSEE, this Agreement shall be terminated effective as of the date such notice is given by LESSEE, and neither party shall have any further rights or obligations pursuant to this Agreement other than LESSEE'S obligation to satisfy damages arising from any negligent or intentional action of itself, its employees, agents or invitees to the extent not covered by insurance proceeds. All of the insurance proceeds shall be paid to LESSEE and LESSOR in pro-rata distributions as their interests may appear based upon the fair market value of each party's interest at the time the proceeds are received. Where allowed by the insurance policy, insurance proceeds shall first be applied to removal of damaged improvements from the Premises before such distribution.

41. PERSONAL PROPERTY

Any personal property of LESSEE or others placed in or upon the Premises shall be at the sole risk of the LESSEE, and LESSOR shall not be responsible or liable for any loss, damage and replacement thereto, unless caused by LESSOR, its officers, agents, or employees, and the LESSEE waives all rights of subrogation against recovery from the LESSOR for such loss or damage.

42. TITLE TO FACILITIES, IMPROVEMENTS AND FIXTURES

- a. It is understood and agreed by the Parties that title to the Premises and to all existing and future structures, facilities, improvements, and fixtures shall be, and shall remain, exclusively with LESSOR, the Wichita Airport Authority.
- b. The term "fixtures", whenever used in this Agreement, shall be construed to include all fixed systems and equipment erected or installed upon the Premises, including but not limited to fencing, grading and pavement, underground wires, cables, pipes, building mechanical systems, conduits, drains and drainages, and all other property of every kind and nature which is permanently affixed to the Premises.

- c. LESSEE may, without cost to LESSOR, furnish and install non-affixed furniture, movable partitions, decorations, systems, accessories, equipment, and tools necessary to conduct its business, which shall be defined as and status retained as Personal Property. Title/ownership to non-affixed, or temporarily affixed, Personal Property shall remain with LESSEE.
- d. All facilities, structures, improvements, alterations, additions, and fixtures permanently affixed to the Premises, shall remain upon and be surrendered with the Premises as a part thereof, on any termination or expiration of this Agreement, for any cause, and shall remain the property of the LESSOR.
- e. All non-affixed furniture, movable partitions, decorations, systems, accessories, equipment, and tools shall retain their status as the LESSEE's Personal Property, and shall be removed by LESSEE upon termination of the Agreement, unless permission to abandon the same is sought and obtained in writing from LESSOR.

43. TAXES

- a. LESSEE agrees to pay all present and future taxes, or in lieu of taxes, special assessments now or hereafter levied or assessed upon: 1) the Premises and facilities; 2) the property owned or possessed by LESSEE and situated on the Premises; and 3) LESSEE's interest in or use of the Premises. LESSEE shall defend, indemnify and save LESSOR, the Wichita Airport Authority, and the City of Wichita, Kansas harmless from any claims or liens in connection with such taxes, obligations in lieu of taxes or assessments.
- b. LESSEE shall promptly pay all taxes, excises, license fees and permit fees of whatever nature lawfully due and applicable to its operation on the Premises. LESSEE may elect, however, at its own cost and expense, to contest any such tax, excise, levy, or assessment. LESSEE shall keep current all Federal, State or local licenses, operating certificates or permits required for the conduct of its operations. LESSEE represents and warrants to LESSOR that it has obtained all licenses, franchises, operating certificates, or other agreements or permits necessary to operate LESSEE'S operation in accordance with the terms of this Agreement, and LESSEE covenants to keep all such licenses, franchises, permits, operating certificates and other agreements in full force and effect during the Term of this Agreement.

- c. LESSEE shall pay all lawful taxes and assessments which, during the Term hereof, may become a lien upon or which may be levied by the State, County, City or any other tax levying body, upon the leased Premises or upon any taxable interest of LESSEE acquired in this Agreement, or any taxable possessory right which LESSEE may have in or to the leased Premises, including any improvements or facilities located on the Premises.
- d. LESSEE shall pay all lawful taxes and assessments on taxable property, real or personal, owned by LESSEE in and about said Premises.
- e. Nothing in this Section shall prevent LESSEE from contesting the legality, validity or application of any such tax or assessment to the full extent LESSEE may be lawfully entitled so to do.

44. LIENS

- a. LESSEE shall take or cause to be taken all steps that are required or permitted by law in order to avoid the imposition of any lien upon the Premises or any improvements thereon. Should actions or inactions of the LESSEE cause any lien to be placed on the Premises or any improvements thereon, LESSEE shall bond against or discharge the same within thirty (30) calendar days after actual notice of the same from any source, whether from LESSOR or otherwise, and provide written proof of discharge or bonding to LESSOR within that time. This obligation includes, but is not limited to, tax liens, and liens arising out of or because of any financing, construction or installation performed by or on behalf of LESSEE or any of its contractors or subcontractors upon LESSEE'S Premises, or due to the performance or lack of performance of any work or labor to it or them at said Premises, or the furnishing of any materials to it or them for use at said Premises.
- b. LESSEE acknowledges that LESSEE acquires no equity interest in the Premises, notwithstanding its construction of improvements on the Premises. Although such improvements accrue to the LESSOR, improvements are for the benefit and enhancement of LESSEE'S use of the Premises. LESSEE has no agency authority to act on behalf of LESSOR for any such construction. LESSEE may not mortgage or pledge as collateral its leasehold interest herein without the prior written consent and conditions of the LESSOR.

- c. LESSOR may consent, upon LESSEE's written request, to an assignment of rents to a governmentally regulated and insured commercial lender as security for financing of LESSEE'S activities on the Premises, which assignment is intended to be a present transfer to such lender of all of LESSEE'S rights to collect and receive rents and charges from approved customers, users, operators, sublessees and permittees. Lender(s) shall have no rights to assign this Agreement or sublease the Premises without the prior written consent of the LESSOR as required under Section 33 ASSIGNMENT, and Section 34 SUBLEASING, PERMITTING, AND CONTRACTING. Upon LESSEE'S written consent, LESSOR agrees to give Lender(s) notice of any default or termination of the Agreement, and allow Lender(s) the same opportunity as the LESSEE under the Agreement to correct any condition or cure any default. Nothing in this Section is intended to relieve the LESSEE of its obligations under this Agreement.

45. SUBROGATION

- a. LESSOR hereby waives any and all rights of recovery against LESSEE for or arising out of damage or destruction of the building, or the demised Premises, or any other property of LESSOR, from causes then included under any of LESSOR's property insurance policies, to the extent such damage or destruction is covered by the proceeds of such policies, whether or not such damage or destruction shall have been caused by the negligence of LESSEE, its agents, servants or employees or otherwise, but only to the extent that its insurance policies then in force permit such waiver without diminution of LESSOR coverage.
- b. LESSEE hereby waives any and all rights of recovery against LESSOR for or arising out of damage to or destruction of any property of LESSEE from causes then included under any of LESSEE's property insurance policies, to the extent such damage or destruction is covered by the proceeds of said policies, whether or not such damage or destruction shall have been caused by the negligence of LESSOR, its agents, servants or employees or otherwise, but only to the extent that its insurance policies then in force permit such waiver.

46. ENVIRONMENTAL ASSESSMENT

- a. A "Phase-II" environmental site assessment shall be conducted, at LESSEE'S sole expense, by an environmental consultant within ninety (90) calendar days following the commencement of this Agreement, and a copy of this report shall be promptly provided to the LESSOR. The environmental site assessment soil and/or water specimen results shall be deemed to be the base-line levels established at the commencement of this Agreement and shall be incorporated herein and made a part of this Agreement upon completion.
- b. "Phase-I" and "Phase-II" environmental site assessments shall be conducted, at LESSEE'S expense, by an environmental consultant satisfactory to the LESSOR and LESSEE within ninety (90) calendar days following the cancellation or termination of this Agreement, and a copy of these reports shall be promptly provided to the LESSOR and LESSEE. If any contamination of the Premises has occurred through LESSEE's fault or negligence, or the fault or negligence of a LESSEE supplier, agent or contractor, LESSEE shall be required to re-establish the Premises to the pre-Agreement threshold or baseline levels, in a timely manner and acceptable to LESSOR.
- c. Nothing in this Section shall be construed to hold LESSEE liable in any way for any environmental impact or release of Hazardous Substances affecting the Premises that occurs by reason of the migration, release, discharge or flow from other verifiable and documented off-site contamination sources that are not attributable to the LESSEE's activity on the Premises. The burden of proof shall rest exclusively with the LESSEE to demonstrate that any such environmental impacts affecting the Premises are not attributable to the LESSEE's activity on the Premises.

47. ENVIRONMENTAL COVENANTS

- a. The LESSEE hereby covenants that it shall not cause or permit any Hazardous Substances to be placed, held, located, or disposed of, on, under or at the Premises and storage tank or within the vicinity, shown on the attached Exhibit A, other than in the ordinary course of business and in compliance with all applicable laws.

- b. The term "Hazardous Substance" as used in this Agreement shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant or infectious or radioactive material, including but not limited to those substances, materials or wastes regulated now or in the future under any of the statutes or regulations listed below and any and all of those substances included within the definitions of "hazardous substances", "hazardous materials", "hazardous waste", "hazardous chemical substance or mixture", "imminently hazardous chemical substance or mixture", "toxic substances", "hazardous air pollutant", "toxic pollutant" or "solid waste" in the statutes or regulations listed below. Hazardous Substances shall also mean any and all other similar terms defined in other federal state and local laws, statutes, regulations, orders or rules and materials and wastes which are, or in the future become, regulated under applicable local, state or federal law for the protection of health or the environment or which are classified as hazardous or toxic substances, materials or waste, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) any petroleum products or fractions thereof, (iii) asbestos, (iv) polychlorinated biphenyls, (v) flammable explosives, (vi) urea formaldehyde, and (vii) radioactive materials and waste.
- c. In addition, a Hazardous Substance shall include: a "Hazardous Substance", "Hazardous Material", "Hazardous Waste", or "Toxic Substance" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801, et seq., or the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq.
- d. In furtherance and not in limitation of any indemnity elsewhere provided in this Agreement to the LESSOR, the LESSEE hereby agrees to indemnify and hold harmless the LESSOR and the City of Wichita from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, the LESSOR or the City of Wichita by any person or entity for or arising out of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Premises during the Term of this Lease Agreement of any Substance (hazardous or otherwise) regulated by any applicable statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability, including strict liability, or standards of conduct concerning, any Hazardous Substance (including, without limitation, any losses, liabilities, reasonable attorneys' fees, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any federal, state or local so-called "Superfund" or "Super lien" laws), if such presence, escape, seepage, leakage, spillage, discharge, emission was

caused by the LESSEE, or persons within the control of the LESSEE, its officers, employees, agents, contractors, invitees and/or licensees, or if such Substance (hazardous or otherwise) was owned by, or located on the Premises by, the LESSEE (without regard to the actual cause of any escape, seepage, leakage, spillage, discharge, emission or release).

- e. If, during the Term of this Agreement, the LESSEE receives any notice of:
 - 1) the happening of any event involving the use (other than in the ordinary course of business and in compliance with all applicable laws), spill, release, leak, seepage, discharge or cleanup of any Substance (hazardous or otherwise) on the Premises or in connection with the LESSEE's operations thereon; or
 - 2) any complaint, order, citation or notice with regard to air emissions, water discharges, or any other environmental, health, or safety matter affecting the LESSEE from any persons or entity (including, without limitation, the United States Environmental Protection Agency (the "EPA") or the Kansas Department of Health and Environment ("KDHE")), the LESSEE shall immediately notify the LESSOR in writing of said notice.
- f. The LESSOR shall have the right, but not the obligation, and without limitation of the LESSOR's other rights under this Agreement, to enter the Premises or to take such other actions as deemed necessary or advisable to inspect, clean up, remove, resolve or minimize the impact of, or to otherwise deal with, any Substance (hazardous or otherwise) or environmental complaint following receipt of any notice from any person, including, without limitation, the EPA or KDHE, asserting the existence of any Substance (hazardous or otherwise) or an environmental complaint pertaining to the Premises or any part thereof which, if true, could result in an order, suit or other action against the LESSEE and/or which, in the reasonable judgment of the LESSOR, could jeopardize its interests under this Agreement. If such conditions are caused by circumstances within the control of the LESSEE or if such circumstances result from a Substance (hazardous or otherwise) owned by, or located on the Premises by, the LESSEE (without regard to the actual cause of any escape, seepage, leakage, spillage, discharge, emission or release) all reasonable costs and expenses incurred by the LESSOR in the exercise of any such rights shall be payable by the LESSEE, within fifteen (15) calendar days of written demand by Landlord.

- g. If an event of default shall have occurred and be continuing, the LESSEE at the request of the LESSOR shall periodically perform, at the LESSEE's expense, an environmental audit meeting LESSOR's requirements and, if reasonably deemed necessary by the LESSOR, an environmental risk assessment, of the Premises, or the hazardous waste management practices and/or hazardous waste disposal sites used by the LESSEE with respect to the Premises. Such audits and/or risk assessments shall be conducted by an environmental consultant satisfactory to the LESSOR, and all environmental audits and environmental risk assessments must be reasonable satisfactory to the LESSOR. Should the LESSEE fail to perform any such environmental audit or risk assessment within ninety (90) calendar days of the written request of the LESSOR, the LESSOR shall have the right, but not the obligation, to retain an environmental consultant to perform any such environmental audit or risk assessment. All costs and expenses incurred by the LESSOR in the exercise of such rights shall be payable by the LESSEE on demand.
- h. Neither LESSEE nor LESSOR shall install or permit to be installed in the Premises friable asbestos, electrical equipment containing polychlorinated biphenyls, or any Substance containing asbestos and deemed hazardous by federal or state regulations applicable to the Premises and respecting such material. The LESSEE shall defend, indemnify, and save the LESSOR and the City of Wichita harmless from all costs and expenses (including consequential damages) asserted or proven against the LESSEE by any person, as a result of the presence of said Substances, and the costs of any removal or compliance with such regulations, if said Substance was installed by the LESSEE, or persons within its control.
- i. Subject to any limitations or restrictions imposed by the Kansas Budget Law or Cash Basis Law, the LESSOR hereby agrees to indemnify and hold harmless the LESSEE from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, the LESSEE by any person or entity for, arising out of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Premises during the Term of this Agreement and the period prior to the Term of this Agreement of any Substance (hazardous or otherwise) (including, without limitation, any losses, liabilities, reasonable attorneys' fees, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any federal, state or local so-called "Superfund" or "Super lien" laws, or any other applicable statute, law, ordinance, code, rule, regulation, order of decree regulating, relating to or imposing liability, including strict liability, or standards of conduct concerning any Hazardous Substance) unless such presence, escape, seepage, leakage, spillage, discharge, emission or release was caused by the LESSEE, or persons within the control of the LESSEE, its officers, employees, agents,

invitees and/or licensees, or if such Substance (hazardous or otherwise) was owned by, or placed upon the Premises by, the LESSEE (without regard to the actual cause of any escape, seepage, leakage, spillage, discharge, emission or release except to the extent such was caused by the LESSOR).

- j. Environmental compliance shall not be limited to those items noted within this Agreement but shall include any current or future federal, state, or local law, statute or regulation, that may be required of LESSEE's operation (storage or use of Substances (hazardous or otherwise), activities of LESSEE's employees or contracted vendor's etc.). LESSEE shall provide LESSOR upon request copies of any plan, training program, training records, material safety data sheet or any other documentation required by said laws.
- k. The provisions of this Section shall survive the termination of this Agreement.

48. FIRE EQUIPMENT AND SYSTEMS

- a. LESSEE shall furnish and maintain at its sole expense on the Premises, fully and continuously operational heat and/or smoke detection devices, fire suppression systems, and portable fire extinguishing equipment as may be required by City and State codes and insurance underwriters.
- b. LESSEE shall immediately notify the LESSOR if any heat and/or smoke detection devices, or fire suppression systems are out of operation for more than twenty-four (24) hours.
- c. LESSEE shall maintain the sole duty and obligation to insure that all heat and/or smoke detection and fire suppression systems are inspected, maintained, and functional in accordance with local and state fire codes.

49. TERMINATION BY LESSOR

- a. In the event LESSEE should not be able to obtain a Select Services Hotel franchise agreement prior to commencement of construction, then the LESSOR shall have the option to terminate this Agreement. At that time, LESSOR shall release the existing Good Faith Security Deposit to LESSEE.
- b. The LESSOR, in addition to any other rights to which it may be entitled by law or otherwise, may terminate this Agreement by giving LESSEE written notice in the event of default by LESSEE under this Agreement failing to be resolved in less than sixty (60) calendar days after the LESSEE's receipt of written notice of such event of default and opportunity to cure from the LESSOR, upon or after the happening of any one of the following events:
 - 1) LESSEE shall file a voluntary petition in bankruptcy or that proceedings in bankruptcy shall be instituted against it and LESSEE is thereafter adjudicated bankrupt pursuant to such proceedings;
 - 2) A court shall take jurisdiction of LESSEE and its assets pursuant to proceedings brought under the provisions of any Federal reorganization act;
 - 3) Receiver of LESSEE's assets shall be appointed;
 - 4) LESSEE shall be divested of its estate herein by other operation of law;
 - 5) LESSEE shall fail to perform, keep and observe any of the obligations, terms, warranties or conditions contained in this Agreement that on the part of LESSEE are to be performed, kept or observed.
- c. If any such condition or default cannot reasonably be corrected within the sixty (60) calendar day period, and LESSEE has demonstrated due diligence with respect to curing said default, then, at the LESSOR's sole discretion, such cure period may be extended for consecutive periods of thirty (30) calendar days, as long as diligent progress is made toward cure, with a reasonably foreseeable resolution date. Under such circumstances, default may be treated as cured until cured. Should diligent progress cease, or the reason for default become apparent as insoluble, then the Term shall cease and expire at the end of the thirty (30) calendar day extension then in effect.

- d. Acceptance of rental by LESSOR for any period or periods after a notice of default is issued by LESSOR of any of the obligations, terms, warranties and conditions herein contained to be performed, kept and observed by LESSEE shall not be deemed a waiver of any other right on the part of LESSOR to terminate this Agreement for failure by LESSEE so to perform, keep and observe any of the obligations, terms, warranties, or conditions hereof to be performed, kept and observed. No waiver of default by LESSOR of any of the obligations, terms, warranties or conditions hereof to be performed, kept and observed by LESSEE, shall be construed to be or act as a waiver of any subsequent default of any of the obligations, terms, warranties or conditions herein contained to be performed, kept and observed by LESSEE.

50. TERMINATION BY LESSEE

- a. The LESSEE, in addition to any other rights to which it may be entitled by law or otherwise, may terminate this Agreement by giving LESSOR written notice in the event of default by LESSOR under this Agreement continuing for more than sixty (60) calendar days after the LESSOR's receipt of written notice of such event of default and opportunity to cure from the LESSEE, upon or after the happening of any one of the following events:
- 1) Issuance by any court of competent jurisdiction of a permanent injunction in any way preventing or restraining the use of the Airport or any major part thereof for aeronautical purposes and the remaining in full force of such permanent injunction for a period of at least one hundred and eighty (180) calendar days;
 - 2) Inability of the LESSEE to use, for a period in excess of one hundred and eighty (180) calendar days, the Airport or any part of the facility because of any law, order, rule, regulation or other action or non-action of the Federal Aviation Administration or any other governmental authority, or because of fire, earthquake, other casualties or acts of God or the public enemy;
 - 3) LESSOR shall fail to perform, keep and observe any of the obligations, terms, warranties or conditions contained in this Agreement that on the part of LESSOR are to be performed, kept or observed, then:
 - i. LESSEE may give LESSOR written notice to correct such condition or cure such default, and if any such condition or default shall continue for sixty (60) calendar days after receipt of such notice by LESSOR, LESSEE may terminate this Agreement and the Term hereof shall cease and expire at the end of such sixty (60) calendar days in the same manner and to the same

effect as if it were the expiration of the Term, unless such condition or default cannot reasonably be corrected within the sixty (60) day period and LESSOR has demonstrated due diligence with respect to curing said default, then such cure period may be extended for consecutive periods of 30 calendar days, as long as diligent progress is made toward cure, with a reasonably foreseeable resolution date. Under such circumstances, default may be treated as cured until cured. Should diligent progress cease, or the reason for default become apparent as insoluble, then the Term shall cease and expire at the end of the thirty (30) day extension then in effect;

- 4) Assumption by the United States Government or any other authorized agency thereof of the operation, control or use of the Airport and the facility herein described, or of any substantial part or parts thereof in such a manner as to substantially restrict the LESSEE for a period of one hundred and eighty (180) calendar days from operating on and within the facility;
- 5) In the event of destruction of the facilities, improvements, or the demised Premises as more fully described in Section 40 DAMAGE OR DESTRUCTION.

51. WAIVER OF STATUTORY NOTICE

In the event LESSOR exercises its option to terminate this Agreement upon the happenings of any or all of the events set forth in Section 49 TERMINATION BY LESSOR any notice of termination given pursuant to the provisions of said Section 49 TERMINATION BY LESSOR shall be sufficient to terminate and terminate this Agreement; and, upon such termination, LESSEE hereby agrees that it shall forthwith surrender possession of the demised Premises to the Wichita Airport Authority. In this connection, LESSEE hereby expressly waives the receipt of any notice to quit or notice of termination which would otherwise be given by LESSOR under any provisions of the laws of the State of Kansas, including, but not limited to, notices required to be given under any section of the Kansas Statutes.

52. RULES AND REGULATIONS

- a.** LESSEE, its agents and employees, shall be subject to any and all applicable rules, regulations, Airport Standard Operating Procedures, orders and restrictions which are now in force or which may hereafter be adopted by the Wichita Airport Authority or the City of Wichita, Kansas, in respect to the operation of the Airport; and shall also be subject to any and all applicable laws, statutes, rules, regulations or orders of any governmental authority, federal or state, lawfully exercising authority over the Airport or LESSEE's operations conducted hereunder.
- b.** LESSOR shall not be liable to LESSEE for any diminution or deprivation of its rights hereunder on account of the exercise of any such authority as in this Section provided, nor shall LESSEE be entitled to terminate this Agreement nor be entitled to seek any damages from LESSOR by reason thereof unless exercise of such authority shall so interfere with LESSEE's exercise of the rights hereunder as to constitute a termination of this Agreement by operation of law in accordance with the laws of the State of Kansas, or as set out in Section 50 TERMINATION BY LESSEE.

53. ENCROACHERS, TRESPASSERS AND OTHER THIRD PARTY HAZARDS

LESSEE shall lawfully remove, or cause to be removed by LESSOR or other official law enforcement agency, all encroachers, trespassers and other third parties violating laws of the federal, state or local government, or who are not on the Premises for legitimate purposes.

54. PORTABLE STORAGE CONTAINERS/STRUCTURES

- a.** Unless specifically approved in writing, and under conditions specified by LESSOR, LESSEE shall not place or allow to be placed upon Premises, any type of portable storage container, trailer, unit, box, or barrel which is used to store merchandise and/or equipment and supplies outside of an enclosed permanent building or structure. Unless specifically approved, and under conditions specified by LESSOR, LESSEE shall not place or allow to be placed upon Premises, any type of portable or temporary structure, trailer, mobile home, modular structure or device.

- b. LESSOR will not unreasonably withhold approval of such container(s) and structure(s) if such is of a temporary nature for the purpose of supporting construction, alteration or improvement activity, or other approved project.

55. NONDISCRIMINATION AND ACDBE

a. Nondiscrimination

The LESSEE shall comply with all the following nondiscrimination provisions to the extent that LESSEE's activities shall be subject to the same:

1) Nondiscrimination in Employment

The LESSEE agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, ancestry, age or disability. The LESSEE shall take affirmative action to insure that employees are treated without regard to their race, creed, color, national origin, sex, ancestry, age or disability. Such actions shall include, but not be limited to, the following: employment, promotion demotion or transfer, recruitment, advertising, lay-off or termination, and selection for training, including apprenticeship. The LESSEE hereby agrees to post, in a conspicuous place, available to employees and applicants for employment, notices setting forth the provisions of this Section.

2) Facilities Nondiscrimination

- i. LESSEE shall make its accommodations and/or services available to the public on fair and reasonable terms without discrimination on the basis of sex, age, race, creed, ancestry, color, national origin, or disability, provided, however, nothing herein shall require the furnishing to the general public of the use of any facilities or accommodations customarily furnished by LESSEE solely to its employees, customers, clients, guests, and invitees; and LESSEE may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar type of price reductions to volume purchasers.

- ii. Noncompliance with any nondiscrimination provision imposed by law related to the accommodations and/or services provide under this Agreement, or noncompliance with any nondiscrimination within this Agreement shall constitute a material breach of this Agreement and, in the event of such noncompliance, LESSOR shall have the right to terminate this Agreement without liability therefore.
 - iii. LESSEE agrees to insert nondiscrimination language in any leases, agreements, or contracts, etc. by which said LESSEE grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the Premises. This subparagraph does not apply to LESSEE's lodging, convention or other similar service contracts with its customers.
- b. **ACDBE** means Airport Concession Disadvantaged Business Enterprise as defined in Federal DBE Regulation 49 CFR Part 23. ACDBE's shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement. LESSOR has developed and implemented an ACDBE program as required under the Kansas Department of Transportation 49 CFR Part 23. The ACDBE program objective is to ensure full and fair access to concession opportunities for *all* businesses and in particular for ACDBE businesses. Contracts pertaining to the concession program at the Airport are subject to the requirements of 49 CFR Part 23 and the Airport's ACDBE Policy and Program requirements and contract provisions. The Airport's Properties and Contracts Analyst has been delegated as the ACDBE Liaison Officer (DBELO). In that capacity, the DBELO is responsible for compliance with all aspects of the ACDBE program.
- c. LESSEE shall comply with the LESSOR's ACDBE Program and all requirements of 49 CFR Part 23 and as amended and guidance issued from time to time by the Federal Aviation Administration ("FAA") regarding the interpretation of the regulations including but not limited to the Joint Venture Guidance in the administration of this Agreement.
- d. Failure of the LESSEE to carry out these requirements may be a material breach of this Agreement, and could result in suspension of the right to operate, Agreement termination, or such other remedy, as LESSOR deems appropriate.

- e. If LESSEE proposes to (1) terminate, substitute or modify the participation of an ACDBE Joint Venture partner, team member, subcontractor or sub-LESSEE after Agreement award, or (2) assign, sublease, or transfer any of the obligations of LESSEE, prior to such change LESSEE shall immediately submit to the DBELO, for review and prior approval, reasonable documentation regarding the proposed change in the ACDBE participation. LESSEE shall include the specific reasons for the change in ACDBE participation and must produce any and all documents and information regarding the proposed change.
- f. LESSEE shall make a good faith effort, as defined 49 CFR Part 23, to replace an ACDBE subject to the changes outlined above that has failed to complete its concession arrangement, joint venture commitment, lease, sublease or subcontracting arrangement with a certified ACDBE, to the extent needed to meet the concession specific goal.
- g. LESSEE shall submit reports and verifications within ten (10) business days as requested by LESSOR and shall provide such financial information or other information deemed necessary by LESSOR to support and document the ACDBE commitment for this Agreement. LESSEE shall also provide such financial information or other information deemed necessary by LESSOR to support and document the ACDBE participation for this Agreement. LESSOR shall have the right until three (3) years after the expiration or termination of this Agreement, through its representatives, and at all reasonable times, to review books, records and financial information of the LESSEE (and where applicable, all individuals, joint venture partners or team members or other business entities that are a party or engaged in concession activity under this Agreement) requested by LESSOR's representatives to substantiate compliance with 49 CFR Parts 23, as amended, and any guidance issued by the FAA from time to time regarding the interpretation of federal regulations.
- h. LESSOR shall have the right to count ACDBE participation under this Agreement toward LESSOR's overall ACDBE goal. The ACDBE participation percentage commitment of the LESSEE is deemed to be contractual in nature and will be monitored by the DBELO. Therefore, failure of LESSEE to meet the ACDBE participation percentage commitment in the Agreement, to the extent needed to meet the concession specific goal, may constitute a material breach of the Agreement. LESSOR shall have the right to suspend the right to operate, terminate the Agreement, or pursue other such remedies at law or in equity to which LESSOR may be entitled.

- i. LESSEE shall file with the DBELO on the anniversary date of the ACDBE's certification, a written affidavit, in a form acceptable to the DBELO, stating any change(s) in the circumstances affecting the ACDBE's ability to meet ACDBE certification eligibility, including but not limited to size, ownership or control criteria of 49 CFR Part 23 or any material changes in the information provided with the ACDBE's application for certification to the Kansas Department of Transportation.
- j. LESSEE shall also file with the DBELO on an annual basis on or before January 1st a written affidavit, in a form acceptable to the DBELO, stating any change(s) in the circumstances affecting the LESSEE's ACDBE participation. The written affidavit shall show LESSEE's compliance with 49 CFR Part 23 and the FAA Joint Venture Guidance including but not limited to capital contribution, roles, responsibilities, control, percentage of equity ownership and address any material change(s) in the ACDBE's participation in the operations authorized by the Agreement and information provided in the LESSEE's proposal regarding ACDBE participation to LESSOR.

56. GENERAL PROVISIONS

LESSOR shall not be obligated to maintain and keep in repair such areas of the Airport as may be leased to or under the control of Airport tenants, whether such area serves aeronautical users or otherwise.

Brokerage Fees. The Authority will not pay brokerage fees to brokers representing the LESSEE. All brokerage fees shall be the responsibility of the LESSEE.

Operation of Airport by the United States of America. This Agreement and all the provisions hereof shall be subject to whatever right the United States of America now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

14 CFR Part 77 of Federal Aviation Regulations. LESSEE agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building, structure, or attachment thereto is planned for the Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Premises. LESSEE by accepting this Agreement expressly agrees for itself, its successors and assignees, it shall not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Premises which shall exceed such maximum height as may be stipulated by LESSOR. It is understood and agreed that applicable laws, codes, regulations or agreements concerning height restrictions shall govern the maximum height to be stipulated by LESSOR. In the event the aforesaid covenants are breached, LESSOR reserves the right to enter upon the Premises and to remove the offending structure or object, and cut down the offending tree, all of which shall be at the expense of LESSEE and without liability to LESSOR.

Airspace. There is hereby reserved to LESSOR, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises. This public right of flight shall include the right to cause or allow in said airspace, any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Airport. No liability on the part of LESSOR shall result from the exercise of this right.

Easement for Flight. LESSEE releases LESSOR from any present or future liability whatsoever and covenants not to sue LESSOR for damages or any other relief based directly or indirectly upon noise, light, vibrations, smoke, fumes, odors, air currents, electronic or other emissions occurring as a result of aviation or airport related operations at or otherwise associated with the Airport. This release and covenant includes but is not limited to claims for damages for physical or emotional injuries, discomfort, inconvenience, property damage, death, interference with use and enjoyment of property, nuisance, or inverse condemnation or for injunctive or other extraordinary or equitable relief.

It is further agreed that LESSOR shall have no duty to avoid or mitigate such damages by, without limitation, setting aside or condemning buffer lands, rerouting air traffic, erecting sound or other barriers, establishing curfews, noise or other regulations, relocating airport facilities or operations or taking other measures, except to the extent, if any, that such actions are validly required by government authority. LESSOR reserves these rights from the Premises an easement for flight of aircraft in or adjacent to the airspace above the Premises and for the existence and imposition over, on and upon said Premises of noise, light, vibrations, smoke, fumes, odors, air currents, electronic or other emissions, discomfort, inconvenience, interference with use and enjoyment, and any consequent reduction in market value which may occur directly or indirectly as a result of aviation, airport or airport-related operations at or otherwise associated with use of the Airport. LESSEE

accepts the Premises subject to the risks and activities hereinabove described.

Airport Hazards. LESSEE by accepting this Agreement agrees for itself, its successors and assigns, that it shall not make use of the Premises in any manner which may interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event this Agreement Term is breached, LESSOR reserves the right to enter upon the Premises and cause the abatement of such interference at the expense of LESSEE without liability to LESSOR of any kind.

Federal Aviation Administration Requirements. LESSOR and LESSEE agree that the requirements of the FAA set out below are approved by both Parties, and if applicable, LESSEE agrees to comply with all FAA requirements with respect to its operations, use of the Airport and this Agreement:

- (a) The LESSEE, for itself and its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the Land that in the event Facilities are constructed, maintained or otherwise operated on the Premises for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the LESSEE shall maintain and operate such Facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.
- (b) The LESSEE, for itself and its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the Land that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said Facilities, (2) that in the construction of any improvements on, over, or under such Land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the LESSEE shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

- (c) The LESSEE assures that it shall undertake an affirmative action program if required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The LESSEE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The LESSEE assures that it shall require that its covered suborganizations provide assurances to the LESSEE that they similarly shall undertake affirmative action programs, and that they shall require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.
- (d) It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958. Rights granted under the Agreement are nonexclusive and that LESSOR reserves the right to grant similar rights and privileges to other tenants and operators in accordance with 49 USC 47107 – Section 308 (a) of Federal Aviation Act of 1982.
- (e) LESSEE agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, that LESSEE may make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.
- (f) LESSOR reserves the right (but shall not be obligated to LESSEE) to maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of LESSEE in this regard.
- (g) LESSOR reserves the right further to develop or improve the landing area and all publicly-owned air navigation facilities of the airport as it sees fit, regardless of the desires or views of LESSEE, and without interference or hindrance.
- (h) LESSOR reserves the right to take any action it considers necessary to protect the aerial approaches of the airport against obstruction, together with the right to prevent LESSEE from erecting, or permitting to be erected, any building or other structure on the airport which, in the opinion of LESSOR, would limit the usefulness of the airport or constitute a hazard to aircraft.
- (i) During time of war or national emergency LESSOR shall have the right to enter into an agreement with the United States Government for military or naval use of part or all of the landing area, the publicly-owned air navigation facilities and/or other areas or facilities of the Airport. If any such agreement is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the agreement with the Government, shall be suspended.

- (j) It is understood and agreed that the rights granted by this Agreement shall not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or development of the Airport.
- (k) There is hereby reserved to LESSOR, its successors and assigns, for the use and benefit of the public, a free and unrestricted right of flight for the passage of aircraft in the air space above the surface of the Premises herein conveyed, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from or operating on or about the airport.
- (l) This Agreement shall become subordinate to provisions of any existing or future agreement between the LESSOR and the United States of America or any agency thereof relative to the operation, development or maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

Subordination to Agreements with the U.S. Government. This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between LESSOR and the United States Government relative to the operation or maintenance of Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to LESSOR for Airport purposes, or the expenditure of federal funds for the improvement or development of Airport, including the expenditure of federal funds for the development of Airport in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time. LESSOR covenants that it has no known existing agreements with the United States Government in conflict with the express provisions hereof.

Non-Waiver of Rights. No waiver or default by either Party of any of the terms, warranties, covenants and conditions hereof to be performed, kept and observed by the other Party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, warranties, covenants or conditions herein contained, to be performed, kept and observed by the other Party.

Captions. The captions/headings of the Sections of this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provisions of this Agreement, and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Severability and Invalid Provisions. In the event any term, covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such term, covenant, condition or provision shall in no way affect any other term, covenant, condition or provision herein contained; provided, however, that the invalidity of any such term, covenant,

condition or provision does not materially prejudice either the LESSOR or the LESSEE in their respective rights and obligations contained in the valid terms, covenants, conditions or provisions in this agreement.

Incorporation of Exhibits. All exhibits referred to in this Agreement are intended to be and are hereby specifically made a part of this Agreement.

Incorporation of Required Provisions. The Parties incorporate in this Agreement by this reference all provisions lawfully required to be contained herein by any governmental body or agency.

Non-Liability of Agents and Employees. No manager, member, officer, agent or employee of either Party to this Agreement shall be charged personally, or held contractually liable by or to the other Party under the terms or provisions of this Agreement, or because of any breach thereof or because of its or their execution or attempted execution.

Successors and Assigns Bound. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto where permitted by this Agreement.

Time of Essence. Time is of the essence in this Agreement.

Relationship of the Parties. It is understood LESSEE is not in any way or for any purpose a partner or joint venturer with or an agent of LESSOR. LESSEE shall act as an independent contractor in the performance of its duties pursuant to this Agreement.

Interpretation. LESSOR and LESSEE hereby agree that this Agreement shall not be construed or interpreted in favor of either Party on the basis of preparation.

Authorization. The individuals executing this Agreement personally warrant that they have full authority to execute this Agreement on behalf of the entity for which they are acting herein.

Acknowledgement. The Parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel deemed necessary for them to form a full and complete understanding of all rights and obligations herein.

Kansas Laws to Govern. This Agreement is created in the State of Kansas and the terms and conditions herein contained shall at all times be governed, interpreted and construed under and in accordance with the laws of the State of Kansas, and venue for resolution of any issue pertaining to this Agreement shall be in Sedgwick County, Kansas.

57. THIRD PARTY RIGHTS

This Agreement does not create for the public or any member thereof the status of a third-party beneficiary, or authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

58. QUIET ENJOYMENT

LESSOR agrees that, on payment of the rentals and fees and performance of the terms, covenants, conditions and agreements on the part of LESSEE to be performed in this Agreement, LESSEE shall have the right to peaceably occupy and enjoy the Premises, subject however, to the provisions otherwise set out in this Agreement.

59. CONDEMNATION

- a. If, during the Term, title to, or the temporary use of, all or any part of the Premises shall be condemned by any authority exercising the power of eminent domain, LESSEE shall, within fifteen (15) calendar days after the date of entry of a final order in any eminent domain proceedings granting condemnation, notify LESSOR in writing as to the nature and extent of such condemnation and whether it is practicable for LESSEE to acquire or construct substitute improvements, or whether LESSEE shall elect to terminate this Agreement.

- b. If LESSEE shall determine that such substitution is practicable and desirable and LESSOR agrees thereto, LESSEE shall forthwith proceed with and complete with reasonable dispatch the acquisition or construction of such substitute improvements. In such case, any net proceeds received from any award or awards with respect to the Premises or any part thereof made in such condemnation or eminent domain proceeds shall be used and applied for the purpose of paying the cost of such substitution. Any proceeds not required for such costs shall be distributed to the Parties in pro-rata distributions as their interests may appear based upon Agreement Term remaining and the fair market value of each Party's interest at the time the proceeds are received.
- c. If LESSEE shall determine that it is not practicable and desirable to acquire or construct substitute improvements, any net proceeds shall be distributed to the Parties in pro-rata distributions as their interests may appear based upon the Agreement Term remaining, and the fair market value of each Party's interest at the time the proceeds are received.
- d. LESSOR shall cooperate fully with LESSEE in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Premises or any part thereof. In no event shall LESSEE or LESSOR voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Premises without the mutual agreement and written consent of the other Party to this Agreement.

60. MODIFICATIONS FOR GRANTING FAA FUNDS

In the event that the LESSOR determines the Federal Aviation Administration requirements call for modifications or changes to this Agreement as a condition precedent to granting of funds for the improvement of the Airport, these modifications or changes shall supersede this Agreement and LESSEE agrees to consent to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this Agreement as may be reasonably required by the LESSOR to fully comply with federal grant assurances and directives, and to obtain Federal Aviation Administration grants-in-aid, provided that no such changes shall materially alter the rights or obligations of LESSEE hereunder.

61. FORCE MAJEURE

Anything contained in this Agreement to the contrary notwithstanding, neither Party shall be deemed in default with respect to the performance of any of the terms, covenants, and conditions of this Agreement if non-performance shall be due to any "Act of God" or "Force Majeure" which terms are defined for purposes of this Agreement as strikes, lockouts, civil commotion, riots, material or labor restrictions by any governmental authority, explosions, earthquakes, fire, floods, catastrophic weather events, acts of the public enemy, wars, acts of terrorism, or insurrections. The occurrence of any Act of God or Force Majeure shall be excused for the period of the delay thus occasioned and the period for performance of any such acts shall be extended for a period equivalent to the period of such delay.

62. HOLD OVER

In the event LESSEE holds over the lease of the Premises, any rights granted after expiration of this Agreement without any written renewal, shall not be deemed to operate as a renewal or extension of this Agreement, but shall only create a month-to-month arrangement, which may be terminated within thirty (30) day notice by LESSOR or LESSEE.

63. INTENTION OF PARTIES

- a. This Agreement is intended solely for the benefit of LESSOR and LESSEE and is not intended to benefit, either directly or indirectly, any third party or member(s) of the public at large. Any work done or inspection of the Premises performed by LESSOR is solely for the benefit of LESSOR and LESSEE.
- b. Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship, between the Parties hereto. Further, non-parties to this Agreement may not maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Agreement. The Parties shall understand and agree that neither the method of payment, nor any other provision contained herein, nor any act(s) of the Parties hereto creates a relationship other than the contractual relationship of the LESSOR and the LESSEE.

- c. It is agreed between the Parties that it is not intended by any of the provisions of this Agreement to create for the public or any member thereof the status of a third-party beneficiary, or to authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

64. ENTIRE AGREEMENT

- a. The Parties understand and agree that this instrument contains the entire Agreement between them. The Parties hereto further understand and agree that the other Party and its agents have made no representations or promises with respect to the Agreement or the making or entry into this Agreement, except as expressed in this Agreement, and that no claim or liability or cause for termination shall be asserted by either Party against the other and such Party shall not be liable by reason of, the making of any representations or promises not expressly stated in this Agreement, any other written or oral agreement with the other being expressly waived.
- b. The individuals executing this Agreement personally warrant that they have full authority to execute this Agreement on behalf of the entity for which they represent.
- c. The Parties hereto acknowledge that they have read this Agreement, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel deemed necessary for them to form a full and complete understanding of all rights and obligations herein.
- d. As of the Commencement Date hereof, this Agreement shall nullify all prior agreements and arrangements between the Parties.
- e. Any sublease agreement between the LESSEE and third-parties which conveys access to, rights of tenancy, or rights or privileges to occupy and use the Premises by third-parties, shall be null and void as a result of termination, cancellation, or expiration of this Agreement, regardless of sublessee's state of compliance with the terms of its sublease.

65. AMENDMENT OR MODIFICATION

No amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same is in writing, dated subsequent to the date hereof, and duly executed by the Parties hereto.

66. APPROVAL, CONSENT, DIRECTION OR DESIGNATION BY AUTHORITY

Wherever under this Agreement, approvals, consents, directions, or designations are required or permitted, such approvals, consents, directions, or designations required or permitted under this Agreement shall be performed by the Director of Airports, or his/her authorized representative. Approvals, consents, directions, or designations made at any time by the Director of Airports, and from time to time, may be withdrawn or modified by notice from LESSOR to LESSEE.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement the day and year first above written.

ATTEST:

THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

By _____
Karen Sublett, City Clerk

By _____
Jeff Longwell, President
"LESSOR"

By _____
Victor D. White, Director of Airports

ATTEST:

WICHITA EISENHOWER HOTEL, L.L.C.

By _____

By _____
Mitesh Patel, President
"LESSEE"

APPROVED AS TO FORM: _____ Date: _____
Jennifer Magaña,
City Attorney and Director of Law